

BOND PURCHASE AND LOAN AGREEMENT

Among

THE HUNTINGTON NATIONAL BANK,

as Lender,

CITY OF WEST LAFAYETTE, INDIANA,

as Issuer,

and

WESTMINSTER VILLAGE WEST LAFAYETTE, INC.,

as Borrower

Dated as of \_\_\_\_\_, 2010

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## **BOND PURCHASE AND LOAN AGREEMENT**

**Lender:** The Huntington National Bank  
50 Monroe Avenue, N.W.  
Grand Rapids, Michigan 49503  
Attn: Thomas L. Gibbons  
Telephone: (616) 235-6454  
Telecopier: (616) 771-6285

**Issuer:** City of West Lafayette, Indiana  
609 West Navajo Street  
West Lafayette, Indiana 47906  
Attn: Clerk-Treasurer  
Telephone: (765) 775-5150  
Telecopier: (765) 775-5159

**Borrower:** Westminster Village West Lafayette, Inc.  
2741 North Salisbury Street  
West Lafayette, Indiana 47906  
Telephone: (765) 463-7546  
Telecopier: (765) 463-6846

THIS BOND PURCHASE AND LOAN AGREEMENT dated as of \_\_\_\_\_, 2010 (this "Agreement") among The Huntington National Bank, a national banking association, as lender (with its successors and assigns, "Lender"), City of West Lafayette, Indiana, a municipal corporation duly organized and validly existing under the laws of the state of Indiana (the "State"), as issuer ("Issuer"), and Westminster Village West Lafayette, Inc., an Indiana nonprofit corporation, as borrower ("Borrower").

WHEREAS, Issuer is authorized and empowered under the laws of the State, including Title 36, Article 7, Chapters 11.9 and 12 of the Indiana Code, as amended (the "Act"), to issue bonds and to enter into loan agreements, contracts and other instruments and documents necessary or convenient to obtain loans for the purpose of facilitating the financing and refinancing of certain economic development facilities as described in the Act; and

WHEREAS, in furtherance of the purposes of the Act, Issuer proposes to finance and refinance all or a portion of the Project (defined below) by Borrower pursuant to this Agreement by issuing economic development revenue bonds and lending the proceeds thereof to Borrower; and

WHEREAS, Borrower proposes to borrow the proceeds of the Bonds (defined below) upon the terms and conditions set forth herein to finance the Project Costs (defined below); and

WHEREAS, Borrower shall make Loan Payments (defined below) directly to Lender as assignee of Issuer and holder of the Bonds pursuant to the terms set forth in this Agreement; and

WHEREAS, this Agreement and the Bonds shall not be deemed to and do not constitute a debt or liability or moral obligation of the State, Issuer or any political subdivision thereof, or a pledge of the faith and credit or taxing power of the State, Issuer or any political subdivision thereof, but shall be a special obligation payable solely from the Loan Payments payable hereunder by Borrower to Lender as assignee of Issuer and holder of the Bonds;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the premises contained in this Agreement, Lender, Issuer and Borrower agree as follows:

## ARTICLE I.

### DEFINITIONS AND EXHIBITS

**Section 1.01. Definitions.** The following terms used herein will have the meanings indicated below unless the context clearly requires otherwise:

"*Account Debtor*" means the person or entity who is obligated on or under an Account.

"*Accounts*" means "accounts" as such term is defined in the UCC, including without limitation, all rights to payment for goods sold or leased or services rendered, whether or not earned by performance and all rights in respect of the Account Debtor and of Borrower, including, without limitation, all such rights in which Borrower has any right, title or interest by reason of the purchase thereof by Borrower, and including, without limitation, all such rights constituting or evidenced by any Account, Chattel Paper, General Intangible, Instrument (as such terms are defined by the UCC), contract, invoice, purchase order, draft, acceptance, intercompany account, note, security agreement, or other evidence of indebtedness or security, together with (i) any collateral assigned, hypothecated or held to secure any of the foregoing and the rights under any security agreement granting a security interest in such collateral, (ii) all goods, the sale of which gave rise to any of the foregoing, and (iii) all powers of attorney for the execution of any evidence of indebtedness or security or other writing in connection therewith.

"*Act*" means Title 36, Article 7, Chapters 11.9 and 12 of the Indiana Code, as amended.

"*Adjusted Debt Service Coverage Ratio*" means, for any twelve month period, that ratio calculated in accordance with GAAP based upon the following formula based on Borrower's financial information:

(Historical Performance Earnings + Depreciation Expense + Amortization Expense + Interest Expense + Bad Debt Expense – Amortization of Deferred Revenue + Net Entrance Fees received – Initial Entrance Fees) X (Historical Interest Expense + Projected Current Maturities of Long Term Debt for the next succeeding twelve (12) months period.) **[Define terms.]**

"*Affiliate*" means with respect to a specified person or entity, any individual, partnership, corporation, limited liability company, trust, unincorporated organization, association or other entity which, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such person or entity, including, without limitation, any general or limited partnership in which such person or entity is a partner.

"*Agreement*" means this Bond Purchase and Loan Agreement, including all exhibits hereto, as any of the same may be supplemented or amended from time to time in accordance with the terms hereof.

"*Arbitrage Certificate*" means the Arbitrage Certificate of even date herewith by Borrower and Issuer, as such Arbitrage Certificate may be amended from time to time in accordance with its terms.

*"Assets Limited as to Use"* means those assets identified as "assets limited as to use" on Borrower's financial statements, consistent with industry standards for continuing care retirement communities.

*"Bond Counsel"* means an attorney or firm of attorneys nationally recognized on the subject of municipal bonds and acceptable to Issuer and Lender.

*"Bonds"* means, collectively, the Issuer's Series A Bond and Series B Bond.

*"Borrower"* means Westminster Village West Lafayette, Inc., an Indiana nonprofit corporation.

*"Borrower Documents"* means, collectively, this Agreement, the Mortgage, the Security Agreement, the Construction Assignments, the Tax Certificate, the Arbitrage Certificate and any other agreements, documents or certificates executed by Borrower in connection with the Bonds contemplated by this Agreement.

*"Budget"* has the meaning set forth in the Construction Addendum.

*"Business Day"* means a day other than (i) a Saturday or Sunday, (ii) a day on which the Lender is required or is authorized to close or is not prohibited from closing, by law (including without limitation, executive orders) and is closed, or (iii) any day on which the Federal Reserve Bank of Cleveland is closed.

*"Cash Equivalents"* means (a) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof) having maturities of not more than twelve (12) months from the date of acquisition, (b) U.S. dollar denominated time deposits and certificate of deposit of (i) the Lender, (ii) any domestic commercial bank of recognized standing having capital and surplus in excess of \$500,000,000 or (iii) any bank whose short-term commercial paper rating from S&P is at least A-1 or the equivalent thereof or from Moody's is at least P-1 or the equivalent thereof (any such bank, including the Lender, being an "Approved Lender"), in each case with maturities of not more than 364 days from the date of acquisition, (c) commercial paper and variable or fixed rate notes issued by any Approved Lender (or by the parent company thereof) or any variable or fixed rate notes issued by, or guaranteed by, any domestic corporation rated A-1 (or the equivalent thereof) or better by S&P or P-1 (or the equivalent thereof) or better by Moody's and maturing within six months of the date of acquisition, (d) repurchase agreements with a bank or trust company (including Lender) or recognized securities dealer having capital and surplus in excess of \$500,000,000 for direct obligations issued by or fully guaranteed by the United States of America in which the owner shall have a perfected first priority security interest (subject to no other Liens) and having, on the date of purchase thereof, a fair market value of at least 100% of the amount of the repurchase obligations, (e) obligations of any state of the United States or any political subdivision thereof, the interest with respect to which is exempt from federal income taxation under Section 103 of the Code, having a long term rate of at least Aa-3 or AA- by Moody's or S&P, respectively, (f) investments in municipal auction preferred stock (i) rated AAA (or the equivalent thereof) or better by S&P or Aaa (or the equivalent thereof) or better by Moody's and (ii) with dividends that



reset at least once every 365 days and (g) investments, classified in accordance with GAAP as current assets, in money market investment programs registered under the Investment Company Act of 1940, as amended, which are administered by reputable financial institutions having capital of at least \$100,000,000 and the portfolios of which are limited to investments of the character described in the foregoing subdivisions (a) through (f)

"*Closing Date*" means \_\_\_\_\_, 2010.

"*Code*" means the Internal Revenue Code of 1986, as amended, and United States Treasury regulations promulgated thereunder.

"*Collateral*" means any and all real or personal property pledged to secure the Bonds and Borrower's obligations under this Agreement.

"*Construction Addendum*" means the Construction Addendum to this Agreement attached as Exhibit H.

"*Construction Assignments*" means the collateral assignments of the Contracts by Borrower to Lender, with the consent of each applicable Contractor.

"*Construction Fund*" means the fund established and held by Lender pursuant to the terms of this Agreement to hold proceeds drawn on the Series B Bond until such time as Borrower uses such funds for Project Costs.

"*Construction Monitor*" means the third party engaged to monitor construction of the Project for Lender and shall initially mean \_\_\_\_\_. [HNB INPUT]

"*Construction Period*" means the time from the Closing Date to [August 1, 2012], or such earlier time as construction of the Project is complete, as certified in writing by the Borrower to the Lender.

"*Contractor*" means any architect, contractor, subcontractor or seller of any portion of the Project, as well as the agents or dealers thereof.

"*Contracts*" means, collectively, all of Borrower's contracts with Contractors of the Project.

"*Damaged Collateral*" means any portion of the Collateral that is lost, stolen, destroyed or damaged beyond repair.

"*Damaged Collateral Amount*" means \_\_\_\_\_.

"*Default*" means an event that, with giving of notice or passage of time or both, would constitute an Event of Default as provided in Article XI hereof.

"*Default Rate*" means, unless Lender shall waive or decrease such amount, the Tax-Exempt Rate, except that the Spread shall be 200 basis points in excess of the rate that would be applicable if no Event of Default had occurred.

*"Determination of Taxability"* means any determination, decision or decree by the Commissioner of Internal Revenue, or any District Director of Internal Revenue or any court of competent jurisdiction, or an opinion obtained by Lender of counsel qualified in such matters, that an Event of Taxability shall have occurred. A Determination of Taxability also shall be deemed to have occurred on the first to occur of the following:

- (a) the date when Borrower files any statement, supplemental statement, or other tax schedule, return or document, which discloses that an Event of Taxability shall have occurred; or
- (b) the effective date of any federal legislation enacted after the date of this Agreement or promulgation of any income tax regulation or ruling by the Internal Revenue Service that causes an Event of Taxability after the date of this Agreement; or
- (c) if upon sale, lease or other deliberate action taken with respect to the Project within the meaning of Treas. Reg. § 1.141-2(d), the failure to receive an unqualified opinion of Bond Counsel to the effect that such deliberate action will not cause interest payable by Borrower hereunder to become includable in the gross income of the recipient.

*"Eligible Investments"* means:

- (i) Government Obligations;
- (ii) Senior debt obligations, letter of credit backed issues, and
- (iii) participation certificates which are fully amortizing, of the following federal agencies: (a) Farmers Home Administration, (b) Federal Farm Credit Bank, (c) Federal Home Loan Bank, (d) Federal Home Loan Mortgage Corporation, (e) Federal Housing Administration, (f) Federal National Mortgage Association, (g) Financial Assistance Corporation, (h) Financing Corporation (FICO), (i) General Services Administration, (j) Government National Mortgage Association, (k) Resolution Funding Corporation, (l) Small Business Administration, (m) Tennessee Valley Authority;
- (iv) Federal funds, certificates of deposit, time deposits and bankers' acceptances (having original maturities of not more than 365 days) of any bank the unsecured, uninsured and unguaranteed debt obligations of which (or, in the case of a bank subsidiary in a bank holding company, debt obligations of the bank holding company) have been rated at least "A" or "A-1" or its equivalent by either Rating Service;
- (v) Commercial paper (having original maturities of not more than 270 days) rated at least "A-1" or its equivalent by either Rating Service;
- (vi) Obligations rated at least "A" or "A-1" or its equivalent by either Rating Service, or unrated general obligations of any Person which has outstanding other unsecured, uninsured and unguaranteed obligations which are so rated by either Rating Service; or unrated obligations of any Person which are secured by a letter of credit from banks which are so rated by either Rating Service;

(vii) Repurchase agreements with any institution the unsecured, uninsured and unguaranteed debt obligations of which (or, in the case of a bank subsidiary in a bank holding company, debt obligations of the bank holding company) are rated at least "A" or its equivalent by either Rating Service;

(viii) Tax-exempt obligations of any state of the United States of America or any political subdivision or other instrumentality of any such state and such obligations are rated in either of the two highest rating categories (i.e., "AA" or higher) of either Rating Service and are not "specified private activity bonds" as defined in Section 57(a)(5)(C) of the Code;

(ix) Tax-exempt money market funds which are "qualified regulated investment companies" within the meaning of IRS Notice 87-22, and which meet the other requirements of IRS Notice 87-22 and any subsequent regulations necessary to exempt investments in such funds from the definition of "investment property" under Section 148 of the Code whose assets are solely invested in obligations rated in either of the two highest rating categories by either Rating Service;

(x) Money market funds the assets of which are obligations of or guaranteed by the United States of America and which funds are rated "Am" or "Am-G" or higher by S&P;

(xi) Investment in money market mutual funds (including without limitation those of the Trustee and its affiliates) provided that such funds are invested solely in obligations or securities otherwise constituting Eligible Investments; and

(xii) Obligations approved in writing by the Bank;

(xiii) provided, however, that "Eligible Investments" with respect to any proceeds resulting from a draw under the Letter of Credit shall mean only Government Obligations maturing as needed to pay principal of and interest on the Series 2010 Bonds on a timely basis, and in no event more than thirty days after purchase. In addition, moneys in the Remarketing Reimbursement Fund may be invested only in Government Obligations which mature no later than the Bond Purchase Date next following the date of such investment.

*"Eligible Receivables"* means any of the Accounts of Borrower which meet each of the following requirements: (i) if it arises from the sale, processing or lease of goods, such goods have been shipped or delivered to the Account Debtor thereof, and if it arises from a sale or rendition of services, such services have been fully performed; (ii) it is a valid, legally enforceable obligation of the Account Debtor thereunder, and is not subject to any offset, counterclaim or other defense on such Account Debtor's part or to any claim on such Account Debtor's part denying liability thereunder in whole or in part; (iii) it is subject to a perfected Lien of first priority in the Lender's favor and is not subject to any other Lien whatsoever, except for Permitted Exceptions; (iv) it is evidenced by an invoice (dated not later than the date of shipment to the Account Debtor or performance and having a due date not more than 30 days after the date of invoice) rendered to such Account Debtor, and is not evidenced by any instrument or chattel

paper; (v) it is payable in United States Dollars; (vi) it is not owing by any governmental agency or body other than Medicaid or Medicare; (vii) it is not owing by any Account Debtor residing, located or having its principal activities or place of business outside the United States of America or Canada, or who is not subject to service of process within the continental United States of America or Canada; (viii) it is not owing by any Account Debtor which is the subject of any bankruptcy or insolvency proceeding; (ix) it is not owing by any of Borrower's Affiliates; (x) it is not unpaid more than 90 days after the date of such invoice; (xi) it is not conditioned upon Account Debtor's approval or otherwise subject to any repurchase obligation or return right as with sales made on a bill and hold, guaranteed sale, sale and return, sale on approval or consignment sale basis; (xii) if the Accounts consist of outstanding entrance fees or management fees, such Accounts do not, in the aggregate, exceed \$ \_\_\_\_\_ [NEED HNB INPUT]; (xiii) it is not based on a pledge or incomplete gift or bequest, and (xix) it is not an Account as to which the Lender, at any time or times hereafter, determines, in good faith, that the prospect of payment or performance by the Account Debtor thereof is or will be materially impaired. An Account of Borrower which is at any time an Eligible Account, but which subsequently fails to meet any of the foregoing requirements, shall immediately cease to be an Eligible Account.

*"Environmental Laws"* means any applicable federal, state or local law, regulation, ordinance, or order pertaining to the protection of the environment, including (but not limited to) applicable provisions of CERCLA, RCRA, the Hazardous Materials Transportation Act, 49 USC §§ 1801 et seq., the Federal Water Pollution Control Act (33 USC §§ 1251 et seq.), the Toxic Substances Control Act (15 USC §§ 2601 et seq.) and the Occupational Safety and Health Act (29 USC §§ 651 et seq.), and all similar state, regional or local laws, treaties, regulations, statutes or ordinances, common law, civil laws, or any case precedents, rulings, requirements, directives or requests having the force of law of any Governmental Authority with jurisdiction over the Project or any portion thereof or its use, as the same have been or hereafter may be amended, and any and all analogous future laws, regulations, statutes or ordinances, common law, civil laws, or any case precedents, rulings, requirements, directives or requests having the force of law of any Governmental Authority with jurisdiction over the Project or any portion thereof and which govern: (a) the existence, cleanup and/or remedy of contamination on property; (b) the emission or discharge of Hazardous Materials into the environment; (c) the control of hazardous wastes; (d) the use, generation, transport, treatment, storage, disposal, removal or recovery of Hazardous Materials; or (e) the maintenance and development of wetlands.

*"Event of Taxability"* means, if as the result of any act, failure to act or use of the proceeds of the Bonds, a change in use of the Project or any misrepresentation or inaccuracy in any of the representations, warranties or covenants contained in this Agreement, the Mortgage, the Security Agreement, the Tax Certificate or the Arbitrage Certificate by Issuer or Borrower, the enactment of any federal legislation after the date of this Agreement or the promulgation of any income tax regulation or ruling by the Internal Revenue Service after the date of this Agreement or for any other reason, the Interest on the Bond is or becomes includable in Lender's gross income.

*"Fitch Rating"* means a private rating of Borrower issued by Fitch Ratings.

"GAAP" means generally accepted accounting principles as then in effect, which shall include the official interpretations thereof by the Financial Accounting Standards Board, consistently applied.

"Governmental Authority" means any federal, state, county or municipal government, or political subdivision thereof, any governmental or quasi governmental agency, authority, board, bureau, commission, department, instrumentality, or public body, or any court, administrative tribunal, or public utility.

"Gross-Up Rate" means, with respect to any Interest payment on the Bond (including payments made prior to the Event of Taxability), the rate necessary to calculate a total payment in an amount sufficient such that the sum of the Interest payment plus an additional payment would, after reduced by the federal tax (including interest and penalties) actually payable thereon, equal the amount of the Interest payment.

"Guarantor" means each entity who guaranties all or a portion of the obligations of Borrower under any of the Borrower Documents.

"Guarantor Documents" means, collectively, each guaranty, security agreement, mortgage, or other agreement or assignment of a Guarantor in connection with the Loan or as otherwise contemplated by this Agreement.

"Hazardous Waste or Materials" means and includes gasoline, petroleum, asbestos containing materials, explosives, radioactive materials, polychlorinated biphenyls or any hazardous or toxic material, substance or waste which is defined by those or similar terms or is regulated as such under any Environmental Laws of any Governmental Authority having jurisdiction over any Collateral or any portion thereof or its use, including: (i) any "hazardous substance" defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. §9601(14) as amended, or any so called "superfund" or "superlien" Law, including the judicial interpretation thereof; (ii) any "pollutant or contaminant" as defined in 42 U.S.C.A. § 9601(33); (iii) any material now defined as "hazardous waste" pursuant to 40 C.F.R. Part 260; (iv) any petroleum, including crude oil or any fraction thereof; (v) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (vi) any "hazardous chemical" as defined pursuant to 29 C.F.R. § 1910.1450(b); and (vii) any other toxic substance or contaminant that is subject to any other Environmental Laws.

**[HNB]** "Historical Performance Earnings" means with respect to any twelve (12) month period, the sum of the following calculated in accordance with GAAP based on Borrower's financial information:

Interest Income + Dividend Income + Contributions + Entrance Fee Amortization + Management Fee Income + Historical Average of Assets Released from Restrictions; but excluding all of the following: realized and unrealized gains and losses arising from Interest Rate Management Agreements, realized and unrealized investment gains and losses, pension adjustments, affects from accounting charges, changes in resident deposits, new project expenses, new

project development costs, and cash and Cash Equivalents pledged to the Bondowner as collateral security pursuant to Section 7.27 of this Agreement.

*"Indebtedness"* means at a particular date, all indebtedness for bonds, money borrowed or for the deferred purchase price of property and lease obligations of Borrower which have been, or which in accordance with Statement of Financial Accounting Standards No. 13, as from time to time amended, should be, capitalized.

*"Initial Reset Date"* means the first day of the month following the month in which the Closing Date occurs.

*"Interest"* means the portion of any payment from Issuer to Lender representing interest on the Bonds.

*"Interest Payment Date"* means the first day of each calendar month (or the next succeeding date if such day is not a Business Day), beginning \_\_\_\_\_, 2010.

*"Interest Period"* means, with respect to the LIBOR Rate, each period beginning on the first LIBOR Business Day of a month and ending on the last LIBOR Business Day of the same month.

*"Interest Rate Management Agreement"* means each interest rate management contract, and any schedules thereto and confirmations, on behalf of Borrower with the **[Lender (or an affiliate of the Lender),] or another financial institution**, including but not limited to, interest rate swaps, collars or caps, forward rate transactions, and foreign exchange transactions, each of which shall be part of an ISDA Master Agreement between Borrower and the **[Lender (or an affiliate of the Lender),] or another financial institution**, as each may be amended, restated, supplemented, replaced or otherwise modified from time to time.

*"Issuer"* means City of West Lafayette, Indiana, acting as issuer under this Agreement.

*"Lender"* means (a) The Huntington National Bank or one of its subsidiaries or related parties, or such other lender which shall purchase the Bonds and act as lender under this Agreement, (b) any surviving, resulting or transferee corporation of The Huntington National Bank and (c) except where the context requires otherwise, any assignee(s) of such entity.

*"LIBOR Business Day"* means a Business Day on which dealings in United States Dollars are carried on in the Lender Interbank Market.

*"LIBOR Rate"* means the rate obtained by dividing: (1) the actual or estimated per annum rate, or the arithmetic mean of the per annum rates, of interest for deposits in United States Dollars for the Interest Period and in an amount approximately equal to the amount to which such LIBOR Rate relates, as determined by Lender in its discretion based upon reference to information which appears on page LIBOR01, captioned British Bankers Assoc. Interest Settlement Rates, of the Reuters America Network, a service of Reuters America Inc. (or such other page that may replace that page on that service for the purpose of displaying London interbank offered rates; or, if such service ceases to be available or ceases to be used by Lender, such other reasonably comparable money rate service as Lender may select) or upon information

obtained from any other reasonable procedure, as of two Business Days prior to the first day of the Interest Period; by (2) an amount equal to one minus the stated maximum rate (expressed as a decimal), if any, of all reserve requirements (including, without limitation, any marginal emergency, supplemental, special or other reserves) that is specified on the first day of each Interest Period by the Board of Governors of the Federal Reserve System (or any successor agency thereto) for determining the maximum reserve requirement with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of such Board) maintained by a member bank of such System, or any other regulations of any governmental authority having jurisdiction with respect thereto as conclusively determined by the Lender. Notwithstanding the foregoing, upon the occurrence and during the continuance of an event or condition described in Section 2.13 of this Agreement, each reference in this Agreement to the "LIBOR Rate" shall be deemed a reference to the Prime-Based Rate, including, without limitation, for purposes of calculating the Tax-Exempt Rate and the Default Rate.

"*Lien*" means any security interest, mortgage, pledge, hypothecation, assignment, lien, charge, encumbrance or claim against or interest in property of any kind or nature whatsoever.

"*Loan*" means the loan from Issuer to Borrower pursuant to this Agreement.

"*Loan Payments*" means any principal and interest payments due on the Bonds and payable by Borrower pursuant to the provisions of this Agreement and the Bonds, which Principal amount plus capitalized interest relating to the Series B Bonds will be specifically set forth in Exhibit A-2 to this document at the end of the Construction Period and which Interest amount shall, except as otherwise provided in this Agreement, be calculated at the Tax Exempt Rate. As provided in Article II hereof, Loan Payments shall be payable by Borrower directly to Lender, as assignee of Issuer and holder of the Bonds, on each Interest Payment Date and each Principal Payment Date.

"*Loan Proceeds*" means the total amount of money actually deposited in the Construction Fund thereby paid to Borrower by Lender pursuant to Section 2.02 hereof.

"*Mandatory Tender Date*" means, with respect to each Bond, \_\_\_\_\_ 1, 2015, as such date may be extended in accordance with Section 2.11 hereof.

"*Material Adverse Change*" or "*material adverse change*" means the business, operations or financial condition of a person, entity or property has changed in a manner which is reasonably expected to materially impair the value of Lender's security for the obligations of Borrower hereunder or under the Borrower Documents, prevent timely payment of the obligations of Borrower hereunder or under the Borrower Documents or otherwise prevent the applicable person or entity from timely performing any of its material obligations hereunder, under the Guarantor Documents, or under the Borrower Documents.

"*Maximum Rate*" means 12% per annum.

"*Mortgage*" means the Mortgage dated as of the date hereof executed by Borrower in favor of Lender relating to the Property.

[HNB] "*Occupancy Rate*" means, for any test date, the Total Days Occupied with respect to all Units of the Borrower during the twelve (12) month period ending on the test date, divided by the Total Days Available with respect to all Units of the Borrower during the same period; provided that, for purposes of any test date prior to September 30, 2010, "Occupancy Rate" shall mean the actual percentage of Borrower's Units occupied on the test date.

"*Permitted Exceptions*" means: (a) the permitted exceptions set forth in Exhibit B to the Mortgage; (b) Liens for current taxes and duties not delinquent or for taxes being contested in good faith, by appropriate proceedings which do not involve, in the good faith determination of the Lender, any material danger of the sale or loss of any of the Collateral and with respect to which Borrower has provided for and is maintaining adequate reserves in accordance with GAAP, (c) Liens in favor of the Lender, (d) Liens of mechanics, materialmen, carriers, warehousemen or other like statutory or common law Liens securing obligations incurred in good faith in the ordinary course of business that are not yet delinquent in accordance with its terms or are not yet due and payable, (e) Liens in the nature of licenses that arise in the ordinary course of business and consistent with past practice; (f) leases and subleases otherwise permitted hereunder granted to others not interfering in any material respect in the business of Borrower or any Subsidiary, and (g) attachments or judgment Liens, where the attachment or judgment which is being contested in good faith by appropriate proceedings which do not involve, in the good faith determination of the Lender, any material danger of the sale or loss of any of the Collateral and with respect to which Borrower has provided for and in maintaining adequate reserves in accordance with GAAP.

"*Plans*" has the meaning set forth in the Construction Addendum.

"*Prime-Based Rate*" means that interest rate determined from time to time by Lender equal to the "prime rate" as displayed in the Bloomberg Financial Markets System (or such other settlement page that may replace such page on that service for the purpose of displaying the prime rate, or, if such service ceases to be available, such other reasonably comparable money rate service as Lender may select), whether or not such rate is publicly announced by the Lender, plus \_\_\_\_% [NEED HNB INPUT]. The Prime-Based Rate may not be the lowest interest rate charged by Lender for commercial or other extensions of credit.

"*Principal*" means the portion of any Loan Payment representing a repayment of the principal amount borrowed pursuant to the Bonds, which shall be as shown in Exhibit A hereto.

"*Principal Payment Date*" means the due date of each regularly scheduled Principal payment on the Bonds. The first principal payment date as to the Series A Bond shall be \_\_\_\_\_, as shown on Exhibit A-1 hereto and the first principal payment date as to the Series B Bond shall be \_\_\_\_\_ assuming [August] 1, 2012 is the end of the Construction Period. If the end of the Construction Period is a date other than [August], 2012 or the principal amount of the Series B Bond drawn by the Borrower is less than \$\_\_\_\_\_, Lender shall prepare a substitute Exhibit A-2 to replace the Exhibit A-2 attached hereto at closing, shall copy Borrower with such revised Exhibit and such revised Exhibit thereafter shall be attached hereto as evidence of the Principal due on the Series B Bonds. Such revised Exhibit shall evidence the date and amounts of each required principal payment on the Series B Bonds.



"*Project*" means the acquisition, improvement and construction of additional units at and renovations of certain improvements at the Property.

"*Project Costs*" means the costs of the acquisition, construction, renovation and improvement with respect to the Project, including those paid or to be paid to any Contractor or reimbursed to Borrower for any portion thereof, and any administrative, engineering, legal, financial and other costs incurred by Lender, Issuer, Borrower or any Contractor in connection with such acquisition, improvement and construction and the financing thereof by Lender and costs of issuance that may be paid pursuant to the Tax Certificate.

"*Project Schedule*" has the meaning set forth in the Construction Addendum.

"*Property*" has the meaning assigned to such term in the Mortgage.

"*Rating Service*" means as of any date, each Moody's Investor Service, Inc. and Standard & Poor's Rating Group.

"*Reset Date*" means the Initial Reset Date, and the first day of each month thereafter until the maturity date of the Bonds.

"*Restricted Assets*" means assets of the Borrower that are (i) held in trust, (ii) subject to donor-imposed or Borrower-imposed restrictions as to the use of the principal and/or income of such assets, or (iii) subject to Liens in favor of third parties that permitted by this Agreement, to the extent of such Liens.

"*Security Agreement*" means the Security Agreement dated as of the date hereof executed by Borrower and Lender relating to Borrower's assets.

"*Series A Bonds*" means the Issuer's \$\_\_\_\_\_ Bond titled as Economic Development Revenue Bond, Series 2010A (Westminster Village Project), in the form attached hereto as Exhibit B.

"*Series B Bonds*" means the Issuer's \$\_\_\_\_\_ Bond titled as Economic Development Revenue Bond, Series 2010B (Westminster Village Project), in the form attached hereto as Exhibit B.

"*Spread*" means, as applicable, the basis points shown in the table below based upon the Borrower's Fitch Rating:

<u>Fitch Rating</u>	<u>Spread</u> <u>(in basis points)</u>
A-	220
BBB+	230
BBB	245
BBB-	265
BB+	315
BB	340

BB-	395
B+	450

As of the Closing Date, the Spread shall be determined assuming a Fitch Rating of BBB, however, Borrower shall obtain a Fitch Rating within 90 days after the Closing Date. If such rating is not obtained by such date, the Spread will thereafter be calculated at the BB+ level until the rating is received. Lender will adjust the Spread on the Bonds within 30 days of being notified in writing of any change in the Fitch Rating.

"*State*" means the State of Indiana.

"*Subsidiary*" means (i) any for profit corporation more than fifty percent (50%) of the capital stock of which is owned or controlled, directly or indirectly, by Borrower or any Subsidiary and whose accounts are required to be consolidated with those of Borrower in accordance with GAAP; and (ii) any nonprofit corporation which is controlled, directly or indirectly, by Borrower.

"*Tax Certificate*" means the Tax Representation Certificate of even date herewith by Borrower, as such Tax Certificate may be amended from time to time in accordance with its terms.

"*Tax-Exempt Rate*" means, as of each Reset Date, a per annum rate of interest, as determined by the Lender, calculated as follows:  $65\% \times (\text{LIBOR Rate} + \text{Spread}) + 0.25\%$ , provided however that such rate shall not exceed the Maximum Rate.

"*Total Days Available*" means, for any period, the total number of days on average that each of the Borrower's Units were available for occupancy during the period. For purposes of this definition, not more than **[four (4) Units]** undergoing refurbishment may be excluded, and not more than **[six (6) Units]** reserved for guests may be excluded.

"*Total Days Occupied*" means, for any period, the total number of days on average that each of the Borrower's Units were occupied during the period.

"*UCC*" means the Uniform Commercial Code as adopted and in effect in the State.

"*Unit*" means **[any independent living unit, assisted living unit, dementia unit, nursing bed, dementia bed, or hospice bed]** designated as such by Borrower at the facility.

"*Unrestricted Cash and Investments*" means all cash and Cash Equivalents including Assets Limited as to Use, Board Designated Assets, cash and Cash Equivalents in debt service reserve funds related to the Bonds, cash and Cash Equivalents added or subtracted in connection with the issuance of the Bonds, but excluding all Restricted Assets.

**Section 1.02. Exhibits.** The following exhibits are attached hereto and made a part hereof:

*Exhibit A1:* Schedule of the Principal Payments and their Payment Dates on Series A Bonds.

*Exhibit A2:* Schedule of Principal Payments and their payment dates for the Series B Bonds (assuming that the full amount of Series B Bonds is drawn and the Construction Period ends on [**August 1**], 2012).

*Exhibit B:* Form of Bond

*Exhibit C:* Form of Borrower's Counsel Opinion

*Exhibit D:* Form of Issuer's Counsel Opinion

*Exhibit E:* Form of Bond Counsel Opinion

*Exhibit F:* Form of Draw Request

*Exhibit G:* Initial Advance Form

*Exhibit H:* Construction Addendum

**Section 1.03. *Rules of Construction.***

(a) The singular form of any word used herein, including the terms defined in Section 1.01 hereof, shall include the plural, and vice versa. The use herein of a word of any gender shall include correlative words of all genders.

(b) Unless otherwise specified, references to Articles, Sections and other subdivisions of this Agreement are to the designated Articles, Sections and other subdivision of this Agreement as originally executed. The words "hereof," "herein," "hereunder" and words of similar import refer to this Agreement as a whole.

(c) The headings or titles of the several articles and sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect of the provisions hereof.

(d) Each reference to time in this Agreement shall mean Grand Rapids, Michigan time.

## ARTICLE II.

### FINANCING OF PROJECT AND TERMS OF LOAN

**Section 2.01. *Acquisition, Improvement and Construction of Property.*** Borrower either has acquired, constructed, expanded or improved the Project or shall acquire, construct, expand or improve the Project pursuant to one or more Contracts from one or more Contractors. Borrower shall remain liable to each Contractor in respect of its duties and obligations in accordance with each Contract and shall bear the risk of loss with respect to any loss or claim relating to any of the Project covered by any Contract, and neither Lender nor Issuer shall assume any such liability or risk of loss. Borrower covenants and agrees to pay or cause to be paid such amounts as may be necessary to complete the improvement, construction and acquisition of the Project and to ensure that the Project is operational to the extent that the Loan Proceeds are insufficient to cause such acquisition, construction, expansion or improvement.

**Section 2.02. *Loan.*** Lender hereby agrees, subject to the terms and conditions of this Agreement, to purchase the Series A Bond in an amount up to \$\_\_\_\_\_ to repay the Borrower's \_\_\_\_\_ to \_\_\_\_\_ and to purchase the Series B Bond in an amount up to \$\_\_\_\_\_ to fund the Project Costs. Issuer hereby agrees, subject to the terms and conditions of this Agreement, to issue the Bonds and Lender agrees to make the proceeds thereof available to Borrower upon draw therefor, however, the Borrower shall draw the full amount of the Series A Bond and \$\_\_\_\_\_ of the Series B Bond on the Closing Date and the Series A Bond and the Series B Bond shall be deemed issued on the Closing Date. Borrower hereby agrees, subject to the terms and conditions of this Agreement, to borrow additional proceeds from Issuer from time to time from the Series B Bond, as Borrower shall direct, prior to **[December 31, 2011]**. Upon fulfillment of the conditions for any draw on such Bonds in Article III hereof, Lender shall deposit the Loan Proceeds in the Construction Fund to be disbursed as provided herein. Issuer's obligation to make payments on the Bonds, and Borrower's obligation to repay the Loan, shall commence, and interest shall begin to accrue, on the Closing Date.

**Section 2.03. *Interest/Principal.*** Except as otherwise provided in this Agreement, the principal amount of the Bonds once drawn upon, shall bear interest (computed on the basis of a 360-day year for the actual number of days elapsed) at the Tax-Exempt Rate. Interest on the total outstanding principal balance of the Bonds shall accrue on the drawn amount of the Bonds beginning on the Closing date.

(a) The interest accruing on the Series A Bonds shall be payable on each Interest Payment Date beginning \_\_\_\_\_, 2010. Principal Payments on the Series A Bond shall be made annually, beginning \_\_\_\_\_, 2011 in accordance with the schedule attached hereto as Exhibit A.

(b) Interest accruing on the Series B Bond during the Construction Period shall be capitalized, paid on each Interest Payment Date, and added to the principal amount payable on the Bonds. Once the Project is complete and the Construction Period has ended, interest on the Series B Bond shall thereafter be payable by Borrower on each Interest Payment Date. After the Construction Period has ended, no further draws on the Series B Bonds are permitted and the

Principal Payments on the Series B Bonds (including capitalized interest not previously paid, (if any)), shall be payable annually in thirty (30) mortgage style principal installments as provided in an exhibit prepared by the Lender at the end of the Construction Period, copied to the Borrower and attached hereto as Exhibit A-2.

(c) The Bonds are also due upon earlier demand in accordance with the terms hereof or prepayment in accordance with the terms of the Bonds and Section 2.07 hereof.

**Section 2.04. *Payments.*** Issuer shall pay the principal of and interest on the Bonds, but only out of the amounts paid by Borrower pursuant to this Agreement. Borrower shall pay to Lender, as assignee of Issuer, Interest on each Interest Payment Date, Principal on each Principal Payment Date, and the purchase price contemplated by Section 2.11 of this Agreement. As security for its obligation to pay the principal of and interest on the Bonds, Issuer assigns to Lender all of Issuer's right to receive Loan Payments from Borrower hereunder and all of Issuer's rights hereunder, and Issuer irrevocably constitutes and appoints Lender and any present or future officer or agent of Lender as its lawful attorney, with full power of substitution and resubstitution, and in the name of Issuer or otherwise, to collect the Loan Payments and any other payments due hereunder and under the Bonds and to sue in any court for such Loan Payments or other payments, to exercise all rights hereunder with respect to the Collateral, and to withdraw or settle any claims, suits or proceedings pertaining to or arising out of this Agreement upon any terms. Such Loan Payments and other payments shall be made by Borrower directly to Lender, as Issuer's assignee and holder of the Bonds, and shall be credited against Issuer's payment obligations hereunder and under the Bonds. No provision, covenant or agreement contained in this Agreement or any obligation imposed on Issuer herein or under the Bonds, or the breach thereof, shall constitute or give rise to or impose upon Issuer a pecuniary liability, a charge upon its general credit or taxing powers or a pledge of its general revenues. In making the agreements, provisions and covenants set forth in this Agreement, Issuer has not obligated itself except with respect to the application of the Loan Payments to be paid by Borrower hereunder. All amounts required to be paid by Borrower hereunder shall be paid in lawful money of the United States of America in immediately available funds. No recourse shall be had by Lender or Borrower for any claim based on this Agreement, the Bonds or the Arbitrage Certificate against any director, officer, employee or agent of Issuer alleging personal liability on the part of such person, unless such claim is based on the willful dishonesty of or intentional violation of law by such person.

**Section 2.05. *Payment on Non-Business Days.*** Whenever any payment to be made hereunder or under the Bonds shall be stated to be due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day.

**Section 2.06. *Loan Payments To Be Unconditional.*** The obligations of Borrower to make the Loan Payments required under this Article II and to make other payments hereunder and to perform and observe the covenants and agreements contained herein shall be absolute and unconditional in all events, without abatement, diminution, deduction, setoff or defense for any reason, including (without limitation) any failure of the Project to be completed, any defects, malfunctions, breakdowns or infirmities in the Project or any accident, condemnation, destruction or unforeseen circumstances. Notwithstanding any dispute between Borrower and any of Issuer, Lender, any Contractor or any other person, Borrower shall make all Loan

Payments when due and shall not withhold any Loan Payments pending final resolution of such dispute, nor shall Borrower assert any right of setoff or counterclaim against its obligation to make such payments required under this Agreement.

**Section 2.07. *Prepayments.***

(a) Borrower may, in its discretion, prepay the Loan and the Bonds in whole on any Interest Payment Date by providing Lender and Issuer with at least 30-days prior written notice thereof and paying the applicable Principal amount and all accrued Interest on the day of such prepayment.

(b) Borrower shall prepay the Loan and the Bonds in full immediately upon demand of Lender after the occurrence of an Event of Default, with Interest being based on the Default Rate. A portion of such prepayment may be made with funds remaining in the Construction Fund.

(c) Borrower shall prepay the Loan and the Bonds in full immediately upon demand of Lender after the occurrence of a Determination of Taxability, with Interest being based on the Default Rate.

Upon any prepayment in part of the Loan and the Bonds, the prepayment shall be applied to the Loan Payments and any other amounts due hereunder in the manner determined by Lender.

**Section 2.08. *Security.*** The obligations of Borrower to make the Loan Payments and to make any other payments required hereunder or under any other Borrower Document and to perform or observe the covenants and agreements contained herein and in all other Borrower Document shall be secured by, among other things, a lien on the Collateral pursuant to this Agreement and the Mortgage and by certain other documents executed and delivered in connection herewith.

**Section 2.09. *Yield Protection in Connection with Changes in the Code.*** The Borrower covenants and agrees that:

(a) In the event of an increase or decrease in the corporate tax rate, as specified by the Code, after the date of this Agreement, the Tax-Exempt Rate and the Default Rate shall be decreased (in the case of an increase in the corporate tax rate), or increased (in the case of a decrease in the corporate tax rate) effective as of the date of such change in the corporate tax rate. For purposes of this Section, in the event of an increase or decrease in the corporate tax rate as hereinabove provided, the Tax-Exempt Rate and the Default Rate shall be adjusted to a rate of interest which is equal to the product of (i) the applicable interest rate on the Bond times (ii) a fraction (expressed as a decimal), the numerator of which is the number 1 minus the corporate tax rate in effect following the change in such rate, and the denominator of which is the number 1 minus the corporate tax rate in effect on the date hereof; and, for purposes of this Section, the "corporate tax rate" shall mean the highest marginal statutory rate of federal income tax imposed on the Lender by the Code.

(b) If, other than as provided herein, at any time (whether before or after repayment of the Bond, or any sale or other transfer of the Bond to any other person, firm or corporation), as a result of a change in the Code, (i) any payment of interest or principal or any amount in respect of or measured in whole or in part by reference to interest on or principal of the Bond, is in the opinion of counsel for the holder, subject to or affected by a preference tax (meaning a tax imposed by Sections 55-59 of the Code, as amended from time to time, or any successor sections thereto or any similar federal tax preferences or similar items), an excess profits tax or other federal tax which changes the basis of taxation of the payments of interest on or principal of the Bond to the holder or affects any method used or calculation involved in determining any federal tax, or (ii) the deductibility of any amount attributable, directly or indirectly, to the purchase or carrying of the Bond is adversely affected, then, upon written notice to such effect from the holder to the Borrower, which notice shall set forth the date as of which any payment may have become subject to such preference, excess profits or other federal tax or such deductibility shall have been affected, the Borrower shall pay to the holder in immediately available funds an amount which, after giving effect to all taxes, interest, penalties, additions to tax and other charges required to be paid by the holder as a result of, attributable to or in respect of such payment, shall be equal to the amount of any such preference, excess profits or other federal taxes and any interest, penalties and additions to tax which are payable by the holder as a consequence of such change, it being the intent and purpose of the parties to this Agreement that the profit of the holder with respect to the payment of interest to it on the Bond shall not be diminished by any such change in the Code (whether through or as a result of direct or indirect federal taxation of the interest on or principal of the Bond).

(c) Any amounts paid to the holder pursuant to this Section shall be refunded to the Borrower if any time subsequent to such payment the Borrower establishes to the satisfaction of the holder that such amounts paid were not legally due; provided, however, in the event the holder shall have to take any action or incur any costs, including the costs of tax advice or legal counsel, to verify such position and obtain a refund of such sums from the appropriate taxing authority, the Borrower shall be obligated to indemnify the holder for all such costs. Notwithstanding the foregoing provisions of this section, no payment by the Borrower shall be required in respect of a preference, excess profits or other federal tax to which this Section relates to the extent that such tax is imposed and computed without regard to whether interest on the Bond is or may be exempt from tax under the provisions of the Code or any successor provisions thereto.

**Section 2.10. *Yield Maintenance in Connection with Governmental Regulation.*** The Borrower covenants and agrees that, notwithstanding any other provision of this Agreement to the contrary, if any law or governmental regulation, guideline or order or interpretation or application thereof by any Governmental Authority charged with the interpretation or administration thereof or compliance with any request or directive of any central bank or other Governmental Authority whether or not having the force of law (a) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against assets held by, credit extended by, deposits with or for the account of, or other acquisition of funds by the holder, or (b) imposes upon the holder any other condition or expense with respect to the Bond, or any security therefor and, the result of any of the foregoing is to increase the cost to, reduce the income received by, or impose any expense upon the holder with respect to the amount of the Bond outstanding, the Borrower shall pay to the holder, upon receipt from the holder, from time

to time, of notice of the amount determined in good faith (using any averaging and attribution methods employed in good faith) by the holder (which determination if made in good faith shall be conclusive absent manifest error) necessary to compensate the holder for such increase in costs, reduction in income or additional expense. Such amount shall be due and payable by the Borrower to the holder on the next following date set for payment of principal or interest hereunder following the date upon which such notice is deemed given. A certificate as to the amount of such increase in costs, reduction in income or additional expense, delivered by the holder to the Borrower shall be conclusive as to such amount due and payable absent manifest error.

### **Section 2.11. *Mandatory Tender of Bonds for Purchase.***

(a) The Bonds are subject to mandatory tender by the Lender on each Mandatory Tender Date at its principal office at or prior to 10:00 a.m. on such Mandatory Tender Date. Upon receipt of Borrower's written request not later than 200 days prior to \_\_\_\_\_ 1, 2015, or if such date has been extended in accordance with this paragraph, the next \_\_\_\_\_ 1 thereafter (or the next succeeding Business Day if such date is not a Business Day), and subject to the provisions of Article XI of this Agreement, the Lender may, in its sole discretion, extend the date set for mandatory tender of the Bonds by one year. Any such extension shall be effective only if the Lender gives notice to Borrower of such extension ("Notice of Extension") not later than one hundred and eighty (180) days prior to the Mandatory Tender Date at issue.

(b) If a Notice of Extension is not delivered prior to an applicable deadline, Borrower shall endeavor to secure a subsequent purchaser for the Bonds, who will purchase the tendered Bonds on the Mandatory Tender Date at a purchase price of par (with Borrower paying Lender accrued Interest on such date). If the Borrower does not secure such subsequent purchaser, Borrower shall be required to purchase the Bonds from the Lender at a price of par plus accrued Interest.

(c) If a holder fails to deliver Bonds to the Borrower pursuant to this Section as required, then such Bonds that are not delivered shall be deemed to have been properly tendered (such Bond being hereinafter referred to as an "Untendered Bond") and, to the extent that there shall be on deposit with the Lender in immediately available funds on the Mandatory Tender Date as provided herein an amount sufficient to pay the purchase price thereof, such Untendered Bond shall cease to constitute or represent a right of the holder to receive payment of Principal or Interest thereon and shall constitute and represent only the right of the holder to receive the payment of the purchase price payable on such date.

### **Section 2.12. *Debiting Accounts for Payment.***

(a) Payments. The payments of Principal or Interest due to the Lender from Borrower, shall be made by the Lender debiting Borrower's operating account held with the Lender which is presently identified as Account No. \_\_\_\_\_ (the "Operating Account"). The Borrower hereby agrees to execute any documentation satisfactory to the Lender necessary to allow the Lender to make such automatic funds withdrawals. Borrower covenants and agrees that on the date any such payment of Principal or Interest is due to the Lender from Borrower, Borrower will have unrestricted, immediately available funds in the Operating



Account in an amount no less than the amount then due. Payment of all other amounts shall be due and payable upon invoice of the same by the Lender to Borrower, and such amounts shall be paid in the same manner described immediately above.

**Section 2.13. *LIBOR Rate Inadequate, Unfair, or Illegal.***

(a) If with respect to any Interest Period (1) deposits in United States Dollars (in the applicable amounts) are not being offered to the Lender in the interbank LIBOR market for such Interest Period, or the Lender otherwise reasonably determines (which determination shall be binding and conclusive on Borrower) that by reason of circumstances affecting the interbank LIBOR market adequate and reasonable means do not exist for ascertaining the applicable LIBOR Rate, or (2) Lender determines in good faith that the LIBOR Rate will not adequately and fairly reflect the cost to Lender of maintaining or funding LIBOR-based Loans for the Interest Period or that the making or funding of LIBOR-based Loans has become impracticable as a result of an event occurring after the date of this Agreement which in the reasonable opinion of Lender materially affects such Loans, then Lender shall promptly notify Borrower thereof and, so long as such circumstances shall continue, on the last day of the current Interest Period for the Loan, Interest on the Loan shall automatically convert to the Prime-Based Rate.

(b) If any change in, or the adoption of any new, law or regulation, or any change in the interpretation of any applicable law or regulation by any Governmental Authority or other regulatory body charged with the administration thereof, should make it (or in the good faith judgment of Lender cause a substantial question as to whether it is) unlawful for Lender to make, maintain or fund LIBOR-based Loans, then Lender shall promptly notify Borrower thereof and, so long as such circumstances shall continue, on the last day of the current Interest Period for the Loan (or on such earlier date as may be required by the relevant law, regulation or interpretation), Interest on the Loan shall automatically convert to the Prime-Based Rate.

## ARTICLE III.

### CONDITIONS PRECEDENT

**Section 3.01. *Conditions of Closing.*** Lender's agreement to purchase the Bonds and to disburse the initial Loan Proceeds shall be subject to the condition precedent that Lender shall have received at the Closing Date or at such time as is set forth below, all of the following, each in form and substance satisfactory to Lender:

(a) This Agreement, properly executed on behalf of Issuer and Borrower, and each of the Exhibits hereto properly completed.

(b) The Bonds, properly executed on behalf of Issuer.

(c) The Tax Certificate, properly executed on behalf of Borrower.

(d) The Arbitrage Certificate, properly executed on behalf of Issuer and Borrower.

(e) The other Borrower Documents, properly executed on behalf of Borrower, and the Guarantor Documents, properly executed by the Guarantors.

(f) A certificate of the Secretary or an Assistant Secretary of Borrower, certifying as to (i) the consent of the Borrower, authorizing the execution, delivery and performance of the Borrower Documents, (ii) the signatures of the officers or agents of Borrower authorized to execute and deliver the Borrower Documents on behalf of Borrower, (iii) Borrower's By-laws, and (iv) the resolutions of Borrower approving execution of the Borrower Documents.

(g) A certificate of the Secretary or an Assistant Secretary of Guarantor, certifying as to (i) the consent of the Guarantor, authorizing the execution, delivery and performance of the Guarantor Documents, (ii) the signatures of the officers or agents of Guarantor authorized to execute and deliver the Guarantor Documents on behalf of Guarantor, (iii) Guarantor's By-laws, and (iv) the resolutions of Guarantor approving execution of the Guarantor Documents.

(h) Currently certified copies of the Articles of Incorporation of Borrower.

(i) Currently certified copies of the Articles of Incorporation of Guarantor.

(j) A Certificate of Existence issued as to Borrower by the Secretary of State of the State not more than 20 days prior to the date hereof.

(k) A Certificate of Existence issued as to Guarantor by the Secretary of State of the State not more than 20 days prior to the date hereof.

(l) The IRS 501(c)(3) determination letter of Borrower.

(m) A completed and executed Form 8038 or evidence of filing thereof with the Internal Revenue Service.

(n) An ordinance or evidence of other official action taken by or on behalf of Issuer to authorize the transactions contemplated hereby.

(o) Evidence that the issuance of the Bonds for the purpose of financing of the Project has been approved by the "applicable elected representative" after a public hearing held upon reasonable notice.

(p) Financing statements authorized by Borrower, as debtor, and naming Lender, as secured party.

(q) Financing statements authorized by Guarantor, as debtor, and naming Lender, as secured party.

(r) Financing statements authorized by Issuer, as debtor, and naming Lender, as secured party.

(s) An opinion of counsel to Borrower and Guarantors, addressed to Lender and Issuer, in the form attached hereto as Exhibit C.

(t) An opinion of Bond Counsel, addressed to Lender, in the form attached hereto as Exhibit E.

(u) Payment of Lender's fees and expenses required by Section 12.01 hereof.

(v) Payment of Issuer's fees, commissions and expenses, if any, incurred in connection with this Agreement and the transactions contemplated hereby.

(w) Evidence of all insurance required by Lender, containing a mortgagee's and lender's loss payable clause or endorsement in favor of Lender.

(x) There shall be no uncured Default or Event of Default by Borrower hereunder.

(y) Borrower shall have furnished evidence satisfactory to Lender that no litigation or proceedings shall be pending or threatened which could or might cause a Material Adverse Change with respect to Borrower or the Project.

(z) As of the Closing Date, Lender shall be satisfied that the sum of the following (collectively, the "Borrowing Base") is greater than or equal to the initial purchase price of the Bonds:

(i) 80% of the appraised value of all real property of Borrower pledged to secure repayment of the Bonds;

(ii) 75% of the estimated appraised value as of \_\_\_\_\_, 20\_\_ of all furniture, fixtures and equipment of Borrower pledged to secure repayment of the Bonds; and

(iii) 80% of all Eligible Receivables of Borrower pledged to secure repayment of the Bonds; provided, however, that the total of item (b) above and this item (c) shall not exceed 15% of item (a) above.

For purposes of this Section 3.01(\_\_\_\_), the form and substance of all appraisals of Borrower's property, whether real or personal, must be satisfactory in form and substance to the Lender.

(aa) Borrower shall have furnished to Lender current annual audited financial statements of Borrower for the most current fiscal year end and for such other persons or entities connected with Borrower as Lender may request, each in form and substance, and certified by such officers of Borrower or such persons or entities, as applicable, as is acceptable to Lender. Borrower shall promptly provide such other additional financial information as Lender requires.

(bb) Borrower shall have delivered to the Lender current environmental assessment reports and ALTA Minimum Standard Detail Surveys, in form and substance satisfactory to Lender in its sole discretion.

(cc) Lender shall have received an acceptable commitment of title insurance from a title insurer satisfactory to Lender in its sole discretion, insuring the Lien of the Mortgage in the Property in such amount and with such endorsements as Lender may request.

(dd) Borrower shall have furnished to Lender evidence that Borrower has, pursuant to an Interest Rate Management Agreement(s) in form and substance satisfactory to Lender in its sole discretion, hedged at least \$\_\_\_\_\_ of the Principal during the Construction Period.

(ee) Borrower shall have furnished such other documents, instruments or certificates as Lender and its counsel may require, including the Plans, the Budget, the Project Schedule, and such documents as Lender in its sole discretion deems necessary or appropriate to effectuate the terms and conditions of this Agreement and to comply with the laws of the State.

**Section 3.02. *Conditions of Disbursement.*** In addition to the requirements set forth in Section 3.01 hereof and provided that the representations and warranties contained in Articles IV and V hereof are correct on and as of the date of such disbursement as though made on and as of such date, except to the extent that such representations and warranties relate solely to an earlier date, and no Default or Event of Default has occurred hereunder, Lender's agreement to deposit proceeds of the Bond in the Construction Fund shall be subject to the additional condition precedent that Lender shall have received all of the following at least two (2) days prior to the date thereof, each in form and substance satisfactory to Lender:

(a) Completed draw request, a form of which is attached hereto as Exhibit F.

(b) Contractor invoice(s) relating to the Project and, if such invoices have been paid by Borrower, evidence of payment thereof and, if applicable, evidence of official intent to reimburse such payment as required by the Code.

(c) A certificate as to completion and payment authorization in form reasonably approved by Lender, properly executed by the Contractor or any subcontractors seeking payment, and the Lender's Construction Monitor;

(d) A report from the Construction Monitor, in form and substance satisfactory to Lender;

(e) Evidence that each applicable condition set forth in the Construction Addendum has been satisfied; and

(f) Any other documents and items reasonably required by Lender.

## **ARTICLE IV.**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS OF ISSUER**

Issuer represents, warrants and covenants for the benefit of Lender and Borrower, as follows:

(a) Issuer is a municipal corporation duly created and validly existing under the Constitution and laws of the State.

(b) Issuer will exercise its best efforts to preserve and keep in full force and effect its existence as a municipal corporation.

(c) Issuer is authorized under the Constitution and laws of the State to issue the Bonds and to enter into this Agreement, the Arbitrage Certificate and the transactions contemplated hereby and to perform all of its obligations hereunder.

(d) Issuer has duly authorized the issuance of the Bonds and the execution and delivery of this Agreement and the Arbitrage Certificate under the terms and provisions of the resolution of its governing body or by other appropriate official approval, and further represents, covenants and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of the Bonds, this Agreement and the Arbitrage Certificate against Issuer. Issuer has taken all necessary action and has complied with all provisions of the Act, including but not limited to the making of the findings required by the Act, required to make the Bonds, this Agreement and the Arbitrage Certificate the valid and binding obligation of Issuer.

(e) The officer of Issuer executing the Bonds, this Agreement, the Arbitrage Certificate and any related documents has been duly authorized to issue the Bonds and to execute and deliver this Agreement and the Arbitrage Certificate and such related documents under the terms and provisions of a resolution of Issuer's governing body, or by other appropriate official action.

(f) Issuer has assigned to Lender all of Issuer's rights in this Agreement (except any indemnification payable to Issuer pursuant to Section 7.07 hereof and notice to Issuer pursuant to Section 12.03 hereof).

(g) Issuer will not pledge, mortgage or assign this Agreement or its duties and obligations hereunder to any person, firm or corporation, except as provided under the terms hereof.

(h) None of the issuance of the Bonds or the execution and delivery of this Agreement or the Arbitrage Certificate, the consummation of the transactions contemplated hereby or the fulfillment of or compliance with the terms and conditions of the Bonds, this Agreement or the Arbitrage Certificate violates any law, rule, regulation or order, conflicts with or results in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which Issuer is now a party or by which it is bound or constitutes a default under any of the foregoing or results in the creation or imposition of any prohibited lien,

charge or encumbrance of any nature whatsoever upon any of the property or assets of Issuer under the terms of any instrument or agreement.

(i) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Issuer's knowledge, threatened against or affecting Issuer, challenging Issuer's authority to issue the Bonds or to enter into this Agreement or the Arbitrage Certificate or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of the Bonds, this Agreement or the Arbitrage Certificate or any other transaction of Issuer which is similar hereto, or the exclusion of the Interest from gross income for federal tax purposes under the Code, or would materially and adversely affect any of the transactions contemplated by this Agreement.

(j) Issuer will submit or cause to be submitted to the Internal Revenue Service a Form 8038 (or other information reporting statement) at the time and in the form required by the Code.

(k) The issuance of the Bonds for the purpose of financing the Project has been approved by the "applicable elected representative" (as defined in Section 147(f) of the Code) after a public hearing held upon reasonable notice.

(l) Issuer will comply fully at all times with the Arbitrage Certificate, and Issuer will not take any action, or omit to take any action, which, if taken or omitted, respectively, would violate the Arbitrage Certificate.

(m) Issuer will take no action that would cause the Interest on the Bonds to become includable in gross income for federal income tax purposes under the Code (including, without limitation, intentional acts under Treas. Reg. § 1.148-2(c) or consenting to a deliberate action within the meaning of Treas. Reg. § 1.141-2(d)), and Issuer will take and will cause its officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the Interest on the Bonds does not become includable in gross income of the recipient for federal income tax purposes under the Code (including, without limitation, the calculation and payment of any rebate required to preserve such exclusion).

## ARTICLE V.

### REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

Borrower represents, warrants and covenants for the benefit of Lender and Issuer, as follows:

(a) (i) Borrower is an Indiana nonprofit corporation, duly organized and validly existing under the laws of the State of Indiana, has power to enter into the Borrower Documents and by proper corporate action has duly authorized the execution and delivery of the Borrower Documents. Borrower is duly licensed or qualified to transact business in the State and in all jurisdictions where the character of the property owned or leased or the nature of the business transacted by it makes such licensing or qualification necessary. Borrower's exact legal name is as set forth on the execution page hereof. Borrower's U.S. Federal Tax Identification Number is \_\_\_\_\_.

(ii) Borrower (1) is an organization described in Section 501(c)(3) of the Code (2) is not a "private foundation" as defined in Section 509(a) of the Code, and (3) is exempt from federal income taxes under Section 501(a) of the Code, except for unrelated business income subject to taxation. Borrower has conducted its operations and filed all required reports with the Internal Revenue Service to maintain such status. The trade or business to be carried on by the Borrower in the facilities financed with the proceeds of the Bonds is not and will not be an unrelated trade or business, determined by applying Section 513(c) of the Code, to any extent which will adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(iii) Borrower has the following Subsidiaries: \_\_\_\_\_.

(b) Borrower has been fully authorized to execute and deliver the Borrower Documents under the terms and provisions of the consent of its managers, or by other appropriate official approval, and further represents, covenants and warrants that all requirements have been met, and procedures have occurred in order to ensure the enforceability of the Borrower Documents and the Borrower Documents have been duly authorized, executed and delivered.

(c) The officer of Borrower executing the Borrower Documents has been duly authorized to execute and deliver the Borrower Documents under the terms and provisions of a consent of Borrower's Board.

(d) The Borrower Documents constitute valid and legally binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except to the extent limited by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights.

(e) The execution and delivery of the Borrower Documents, the consummation of the transactions contemplated hereby and the fulfillment of the terms and conditions hereof do not and will not violate any law, rule, regulation or order, conflict with or result in a breach of any of the terms or conditions of the articles of organization or operating agreement of Borrower or of



any corporate restriction or of any agreement or instrument to which Borrower is now a party and do not and will not constitute a default under any of the foregoing or result in the creation or imposition of any liens, charges or encumbrances of any nature upon any of the property or assets of Borrower contrary to the terms of any instrument or agreement.

(f) The authorization, execution, delivery and performance of this Agreement by Borrower do not require submission to, approval of, or other action by any governmental authority or agency, which action with respect to this Agreement has not been taken and which is final and nonappealable.

(g) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Borrower's knowledge, threatened against or affecting Borrower, challenging Borrower's authority to enter into the Borrower Documents or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of the Borrower Documents or any other transaction of Borrower which is similar hereto, or the exclusion of the Interest from gross income for federal tax purposes under the Code, or could reasonably be expected to cause a material adverse effect on the financial condition, operations, business or prospects of Borrower.

(h) The Property is properly zoned for its current and anticipated use and the use of the Property will not violate any applicable zoning, land use, environmental or similar law or restriction. Borrower has all licenses and permits to use the Collateral or will cause any lessee of the Property to maintain such licenses and permits.

(i) Borrower has received no notification of any kind suggesting that the Property, any adjacent property, or any other Collateral is or may be contaminated with any Hazardous Waste or Materials or is or may be required to be cleaned up in accordance with any applicable law or regulation; and Borrower further represents and warrants that, except as previously disclosed to Lender in writing, to the best of its knowledge as of the date hereof after due and diligent inquiry, there are no Hazardous Waste or Materials located in, on or under the Property, any adjacent property, or any other Collateral or incorporated in any Improvements, nor has the Property or any adjacent property ever been used as a landfill or a waste disposal site, or a manufacturing, handling, storage, distribution or disposal facility for Hazardous Waste or Materials. Borrower has obtained and shall cause any lessee of the Property to obtain all permits, licenses and other authorizations which are required under any Environmental Laws at Borrower's facilities or in connection with the operation of its facilities. Except as previously disclosed to Lender in writing, Borrower and all activities of Borrower at the Property comply with all Environmental Laws and with all terms and conditions of any required permits, licenses and authorizations applicable to Borrower with respect thereto and Borrower covenants to cause any lessee of the Property, or any other Collateral comply with such Environmental Laws. Except as previously disclosed to Lender in writing, Borrower is also in compliance, and shall cause any lessee of the Property, or any other Collateral to be in compliance, with all limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in Environmental Laws or contained in any plan, order, decree, judgment or notice of which Borrower is aware. Except as previously disclosed to Lender in writing, Borrower is not aware of, nor has Borrower received notice of, any events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or

prevent continued compliance with, or which may give rise to any liability under, any Environmental Laws.

(j) The Project is of the type authorized and permitted to be financed with the proceeds of the Bonds pursuant to the Act.

(k) Borrower owns or will own the Property and the Project and intends to operate the Property and the Project, or cause the Property and the Project to be operated, as an "economic development facility," within the meaning of the Act, until the date on which the Bonds have been fully paid.

(l) Borrower will not take, and will not permit any lessee to take, any action that would cause the Interest on the Bonds to become includable in gross income of the recipient for federal income tax purposes under the Code (including, without limitation, intentional acts under Treas. Reg. § 1.148-2(c) or deliberate action within the meaning of Treas. Reg. § 1.141-2(d)), and Borrower will take and will cause its lessees, officers, employees and agents to take all affirmative actions legally within its power necessary to ensure that the Interest on the Bonds does not become includable in gross income of the recipient for federal income tax purposes under the Code (including, without limitation, the calculation and payment of any rebate required to preserve such exclusion).

(m) Borrower has paid or caused to be paid to the proper authorities when due all federal, state and local taxes required to be withheld by it. Borrower has filed all federal, state and local tax returns which are required to be filed, and Borrower has paid or caused to be paid to the respective taxing authorities all taxes as shown on said returns or on any assessment received by it to the extent such taxes have become due.

(n) All financial and other information provided to Lender by or on behalf of Borrower or any Guarantor in connection with Borrower's request for the Loan contemplated hereby is true and correct in all material respects and Borrower has not omitted to provide Lender with any information which would be material to Lender's decision to enter into this Agreement and, as to projections, valuations or pro forma financial statements, present a good faith opinion as to such projections, valuations and pro forma condition and results.

(o) Borrower has authorized Lender to file financing statements, and such financing statements when filed will be sufficient to perfect the security interest created pursuant to this Agreement. When such financing statements are filed in the offices noted therein, Lender will have a valid and perfected security interest in the Collateral, subject to no other Lien. None of the Collateral constitutes a replacement of, substitution for or accessory to any property of Borrower subject to a Lien. Borrower owns the Collateral subject to no Liens except for the Liens created hereby and by the Mortgage and the Permitted Exceptions.

(p) Borrower will aid and assist Issuer in connection with preparing and submitting to the Internal Revenue Service a Form 8038 (or other applicable information reporting statement) at the time and in the form required by the Code.

(q) Borrower will comply, and will cause any lessee of the Property to comply, fully at all times with the Tax Certificate and the Arbitrage Certificate, and Borrower will not take any

action, or omit to take any action, which, if taken or omitted, respectively, would violate the Tax Certificate or the Arbitrage Certificate, and the representations and warranties in the Tax Certificate and the Arbitrage Certificate are true and correct.

(r) Expenses for work done by officers or employees of Borrower in connection with the Project will be included as a Project Cost, if at all, only to the extent (i) such persons were specifically employed for such particular purpose, (ii) the expenses do not exceed the actual cost thereof and (iii) such expenses are treated or capable of being treated (whether or not so treated) on the books of Borrower as a capital expenditure in conformity with GAAP.

(s) Any costs incurred with respect to that part of the Project paid from the Loan Proceeds shall be treated or capable of being treated on the books of Borrower as capital expenditures in conformity with GAAP.

(t) No part of the Loan Proceeds will be used to finance inventory or rolling stock or will be used for working capital or to finance any other cost not constituting a Project Cost.

(u) The Property is property of the character subject to the allowance for depreciation under Section 167 of the Code.

(v) Pursuant to Section 1502 of the American Recovery and Reinvestment Act, Borrower has designated the Project Bonds as "qualified tax exempt obligations" for purposes of Section 265(b)(3) of the Code.

(w) Borrower will obtain a rating of its long-term debt from Fitch Ratings within ninety (90) days after the date of this Agreement and will thereafter contract with Fitch Ratings (or another national ratings organization acceptable to Lender) to monitor that rating and will immediately report any change in that rating to Lender.

(x) Borrower shall not, without the prior written consent of Lender, make, permit or suffer (a) a material amendment or modification of its organizational documents, (b) any dissolution or termination of its existence or (c) any change of its name, jurisdiction of organization, or status as a tax-exempt organization under the Code.

(y) Borrower will not merge or consolidate with any Person, dissolve, wind up its affairs, or sell, assign, lease, or otherwise dispose of (whether in one transaction or in a series of transactions), all or substantially all of its assets (whether now owned or hereafter acquired) to any Person.

(z) Borrower will promptly notify the Bondowner in writing of (a) any event which, if existing at the date hereof, would require qualification of the representations and warranties set forth herein and (b) any Material Adverse Change in the condition or business, financial or otherwise, of Borrower or any Guarantor; provided, however that such notification shall not be deemed to cure any default or Event of Default occurring as a result of such event or Material Adverse Change.

(aa) The Property conforms, and the Project will be constructed and equipped in a manner that conforms, with all applicable zoning, planning, building, and other laws and

ordinances and regulations of Governmental Authorities having jurisdiction over the Property or the Project, as applicable; all utilities necessary to construct and operate the Project are or will be available during and after the construction of the Project; and Borrower has obtained all requisite zoning, planning, building and environmental and other permits necessary to construct the Project.

(bb) Borrower has on hand or has made provision for such funds as, when added to the proceeds of the Bonds, will be sufficient to complete the construction and equipping of the Project in accordance with the plans and specifications for the Project approved by Lender.

(cc) The obligations of Borrower hereunder are not being made for the purpose of purchasing or carrying "margin stock" within the meaning of Regulation T, U or X issued by the Board of Governors of the Federal Reserve System, and Borrower agrees to execute all instruments necessary to comply with all the requirements of Regulation U of the Federal Reserve System.

Each request for a draw of Loan proceeds shall be deemed to be a representation by Borrower that all of the representations and warranties of Borrower in this Agreement are true and correct as if made on the date of such draw request, except to the extent that such representations and warranties expressly relate to an earlier date, and that no Default or Event of Default shall have occurred and be continuing.

## ARTICLE VI.

### TITLE TO COLLATERAL; SECURITY INTEREST

**Section 6.01. *Title to Collateral.*** Borrower shall have good, marketable and insurable title in fee simple to all Property, and good title to all other Collateral. Borrower will at all times protect and defend, at its own cost and expense, such title from and against all Liens and legal processes of creditors of Borrower, and keep all Collateral free and clear of all such Liens and processes other than Liens created hereby and by the Mortgage and the Permitted Exceptions.

**Section 6.02. *Security Interest in Collateral.*** This Agreement is intended to constitute a security agreement within the meaning of the UCC. As security for Borrower's payment to Lender, as assignee of Issuer, of Loan Payments and all other amounts payable to Lender hereunder and under any other Borrower Document, Borrower hereby grants to Lender, a security interest constituting a first lien on the Collateral. Borrower ratifies its previous authorization for Lender to pre-file UCC financing statements and any amendments thereto describing the Collateral and containing any other information required by the applicable UCC. Borrower authorizes Lender, and hereby grants Lender a power of attorney (which is coupled with an interest), to file financing statements and amendments thereto describing the Collateral and containing any other information required by the applicable UCC and all proper terminations of the filings of other secured parties with respect to the Collateral, in such form and substance as Lender, in its sole discretion, may determine. Borrower agrees to execute such additional documents, including demands for terminations, assignments, affidavits, notices and similar instruments, in form satisfactory to Lender, and take such other actions that Lender deems necessary or appropriate to establish and maintain the security interest created by this Section, and Borrower hereby designates and appoints Lender as its agent, and grants to Lender a power of attorney (which is coupled with an interest), to execute on behalf of Borrower such additional documents and to take such other actions. Borrower hereby waives any right that Borrower may have to file with the applicable filing officer any financing statement, amendment, termination or other record pertaining to the Collateral and/or Lender's interest therein.

**Section 6.03. *Change in Name or Corporate Structure of Borrower; Change in Location of Borrower's Chief Executive Office or Principal Executive Office.*** Borrower's chief executive office and principal executive office are located at the address set forth above, and all of Borrower's records relating to its business and the Collateral are kept at such location. Borrower hereby agrees to provide written notice to Lender and Issuer of any change or proposed change in its name, corporate structure, chief executive office or principal executive office or change or proposed change in the location of the Collateral. Such notice shall be provided thirty days in advance of the date that such change or proposed change is planned to take effect.

**Section 6.04. *Liens.*** Borrower shall not, directly or indirectly, create, incur, assume or suffer to exist any Lien on or with respect to the Collateral except for the Lien created hereby or by the Mortgage and the Permitted Exceptions. Borrower shall promptly, at its own expense, take such action as may be necessary duly to discharge or remove any such Lien. Borrower shall reimburse Lender for any expenses incurred by Lender to discharge or remove any Lien.

**Section 6.05. *Assignment of Insurance.*** As additional security for the payment and performance of Borrower's obligations hereunder, Borrower hereby assigns to Lender any and all moneys (including, without limitation, proceeds of insurance and refunds of unearned premiums) due or to become due under, and all other rights of Borrower with respect to, any and all policies of insurance now or at any time hereafter covering the Collateral or any evidence thereof or any business records or valuable papers pertaining thereto, and Borrower hereby directs the issuer of any such policy to pay all such moneys directly to Lender. Borrower hereby assigns to Lender, as assignee of Issuer, any and all moneys due or to become due with respect to any condemnation proceeding affecting the Collateral. At any time, whether before or after the occurrence of any Event of Default, Lender may (but need not), in Lender's name or in Borrower's name, execute and deliver proof of claim, receive all such moneys, endorse checks and other instruments representing payment of such moneys, and adjust, litigate, compromise or release any claim against the issuer of any such policy or party in any condemnation proceeding.

## ARTICLE VII.

### AFFIRMATIVE COVENANTS OF BORROWER

So long as the Loan shall remain unpaid, Borrower will comply with the following requirements:

**Section 7.01.** Reserved.

**Section 7.02.** *Financial Statements; Books and Records; Inspection and Examination.*

(a) Borrower shall provide Lender:

(i) Commencing with the fiscal year ending \_\_\_\_\_, as soon as practicable, but in any event within one hundred and twenty (120) days after the end of each fiscal year, audited annual financial statements of the Borrower in form and substance consistent with Borrower's current practice, including a balance sheet, statement of income and retained earnings and a statement of cash flows, prepared in accordance with GAAP, on a basis consistent with prior years unless specifically noted thereon;

(ii) As soon as practicable, but in any event within forty-five (45) days after the end of each fiscal quarter, except for each fiscal quarter that corresponds with a fiscal year end, internally prepared quarterly financial statements of the Borrower;

(iii) Quarterly, accompanying the quarterly and annual statements delivered on such day pursuant to subsections (i) and (ii), above, a certificate executed by the chief financial officer of Borrower (i) certifying compliance by Borrower with the requirements of all financial covenants set forth in this Agreement and stating whether any noncompliance occurred during the reporting period covered by such financial statements, and containing the calculations used to document compliance therewith; (ii) certifying as to the continued accuracy of Borrower's representation and warranties in this Agreement and continued compliance of Borrower's covenants in this Agreement during the fiscal year and as of the fiscal year end covered by such audited annual financial statements and noting any exceptions to such continued accuracy and compliance; and (iii) certifying that s/he has no knowledge of any Event of Default under Article XI hereof or of any event which, with notice or lapse of time, or both, would constitute an Event of Default under Article XI hereof. Each such certificate shall be substantially in the form requested by Lender and accompanied by an attached and referenced schedule setting forth in reasonable detail any inaccuracy of representations and warranties and any noncompliance of covenants under this Agreement or the other Borrower Documents;

(iv) As soon as possible, but in any event within five (5) days after the Borrower becomes aware thereof, a written statement signed by an officer of the Borrower as to the occurrence of any Event of Default stating the specific nature thereof,

the Borrower's intended action to cure the same and the time period in which such cure is to occur;

(v) As soon as possible, but in any event within ten (10) days after the commencement thereof, a written statement signed by an officer of the Borrower describing any litigation instituted by or against the Borrower or any Guarantor which, if adversely determined, may have a material effect upon the business, operations, financial condition, properties or prospects of the Borrower or Guarantor;

(vi) As soon as practicable, but in any event not later than forty-five (45) days after the end of each calendar quarter, an occupancy report in form reasonably acceptable to Lender dated as of the last day of such calendar quarter, which shall identify Occupancy for such quarter and for the twelve (12) month period then ended;

(vii) During any period that furniture, fixtures, equipment, or Eligible Receivables support the amount of the Loan, on or before the 25th day of each calendar month, a Borrowing Base report in form satisfactory to Lender; and

(viii) Such other information as the Lender may from time to time reasonably request.

(b) Borrower will keep accurate books of record and account for itself pertaining to the Collateral, the Project, and Borrower's business and financial condition and such other matters as Lender may from time to time request in which true and complete entries will be made in accordance with GAAP. Additionally, Lender may, in its discretion and after an Event of Default at Borrower's expense, engage an independent inspector to inspect, certify and examine Borrower's books of record and account and Borrower agrees, upon reasonable request of Lender, to permit such inspector or any officer, employee, attorney or accountant for Lender to audit, review, make extracts from, or copy any and all corporate and financial books, records and properties of Borrower at all times during ordinary business hours, and to discuss the affairs of Borrower with such inspector or any of Lender's directors, officers, employees or agents. Borrower will, with reasonable notice, permit Lender, or its employees, accountants, attorneys or agents, to examine and copy any or all of its records and to examine and inspect the Collateral at any time during Borrower's business hours. The foregoing inspection and audit rights of Lender are in addition to those set forth in the Construction Addendum.

**Section 7.03. *Compliance With Laws.*** Borrower will (a) comply with the requirements of applicable laws and regulations, the noncompliance with which could reasonably be expected to cause a material adverse effect on its financial condition, operations, business or prospects and (b) use and keep the Collateral, and will require that others use and keep the Collateral, only for lawful purposes, without violation of any federal, state or local law, statute or ordinance, the violation of which could reasonably be expected to cause a material adverse effect on its financial condition, operations, business or prospects. Borrower shall secure, or cause any lessee at the Property to secure, all permits and licenses, if any, necessary for the installation and operation of the Collateral. Borrower shall comply, and shall cause any lessee at the Property to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of each portion of the Collateral) with all laws of the jurisdictions in which its



operations involving any portion of the Collateral may extend and of any legislative, executive, administrative or judicial body exercising any power or jurisdiction over any portion of the Collateral or its interest or rights under this Agreement, the noncompliance with which could reasonably be expected to cause a material adverse effect on its financial condition, operations, business or prospects.

**Section 7.04. *Environmental Compliance.*** Borrower shall promptly comply, and shall cause any lessee at the Property to comply, with all statutes, regulations and ordinances, and with all orders, decrees or judgments of Governmental Authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of Hazardous Waste or Materials in, on or under the Property, any other Collateral, or any adjacent property, or incorporated in any Improvements, at Borrower's expense. In the event that Lender at any time believes that the Property or any other Collateral is not free of all Hazardous Waste or Materials or that Borrower or any lessee of the Property has violated any applicable Environmental Laws with respect to the Property or any other Collateral, then immediately, upon request by Lender, Borrower shall obtain and furnish to Lender, at Borrower's sole cost and expense, an environmental audit and inspection of the Property or other Collateral from an expert satisfactory to Lender. In the event that Borrower fails to immediately obtain such audit or inspection, Lender or its agents may perform or obtain such audit or inspection at Borrower's sole cost and expense. Lender may, but is not obligated to, enter upon the Property and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest in the Property or other Collateral; and whether or not Borrower has actual knowledge of the existence of Hazardous Waste or Materials on the Property, any other Collateral, or any adjacent property as of the date hereof, Borrower shall reimburse Lender as provided herein for the full amount of all costs and expenses incurred by Lender prior to Lender acquiring title to the Property through foreclosure or acceptance of a deed in lieu of foreclosure, in connection with such compliance activities. Neither this provision nor any provision herein or in the Mortgage or related documents shall operate to put Lender in the position of an owner of the Property or any other Collateral prior to any acquisition of the Property by Lender. The rights granted to Lender herein and in the Mortgage or related documents are granted solely for the protection of Lender's lien and security interest covering the Property and other Collateral and do not grant to Lender the right to control Borrower's actions, decisions or policies regarding Hazardous Waste or Materials.

**Section 7.05. *Payment of Taxes and Other Claims.*** Borrower will pay or discharge or cause to be paid or discharged, when due, (a) all taxes, assessments and governmental charges levied or imposed upon it or upon its income or profits, upon any properties belonging to it (including, without limitation, the Collateral) or upon or against the creation, perfection or continuance of the lien created pursuant to any Borrower Document or Guarantor Document, prior to the date on which penalties attach thereto, (b) all federal, state and local taxes required to be withheld by it, and (c) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon any properties of Borrower or any Guarantor; provided, that Borrower shall not be required to pay any such tax, assessment, charge or claim whose amount, applicability or validity is diligently being contested in good faith by appropriate proceedings. Borrower will pay, or cause to be paid, as the same respectively come due, all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Collateral.

Borrower shall, upon the occurrence of any Event of Default and Lender's written request, make insurance and tax escrow (if applicable) deposits, in amounts reasonably determined by Lender from time to time as being needed to pay taxes and insurance premiums when due, in an escrow account held by Lender in Lender's name and under its sole dominion and control. Notwithstanding the foregoing, Borrower shall not be obligated to make escrow payments for assessments or taxes for which Borrower has applied for an exemption or is otherwise contesting in good faith. All payments deposited in the escrow account, and all interest accruing thereon, are hereby pledged as additional Collateral for the obligations of Borrower to the Lender hereunder. Notwithstanding Lender's holding of the escrow account, nothing herein shall obligate Lender to pay any insurance premiums or real property taxes or other taxes with respect to any portion of the Project, unless the Event of Default has been cured to the satisfaction of the Lender. If the Event of Default has been cured to the satisfaction of the Lender, (i) Lender shall make available to Borrower such funds as have been deposited in the escrow account from time to time as a result of such Event of Default, together with accrued interest (if any) thereon which has not been paid from such account and (ii) Borrower will not be required to make any further escrowed payments with respect to such Event of Default.

**Section 7.06. *Preservation and Maintenance of Collateral.*** Borrower shall, or shall cause any lessee or Guarantor at its own expense, (a) maintain, preserve and keep the Collateral in good repair, working order and condition, and shall from time to time make all repairs and replacements necessary to keep the Collateral in such condition, and in compliance with state and federal laws, ordinary wear and tear excepted, (b) maintain the Collateral in a condition suitable for certification by the manufacturer thereof (if certification is available) and in conformance with all manufacturer's recommended maintenance requirements, (c) not commit waste or permit impairment or deterioration of the Collateral, (d) not abandon the Collateral, (e) restore or repair promptly and in a good and workmanlike manner all or any portion of the Collateral to its condition as of the Closing Date, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (f) keep all Collateral and other improvements, fixtures, equipment, machinery and appliances on the Property in which Borrower has an interest, in good repair and shall replace all Collateral and other fixtures, equipment, machinery and appliances on the Property in which the Borrower has an interest when necessary to keep such items in good repair, (g) generally operate and maintain the Property in a manner to ensure maximum rentals, and (h) give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Collateral, the security of this Agreement or the Mortgage or the rights or powers of Lender hereunder or thereunder. Neither Borrower nor any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance, in which Borrower has an interest, in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind. In the event that any portion of the Collateral become worn out, lost, destroyed, damaged beyond repair or otherwise rendered unfit for use, Borrower, at its own expense and expeditiously, will replace or cause the replacement of such portion by replacement property free and clear of all liens and encumbrances and with a value and utility at least equal to that of the property being replaced (assuming that such replaced portions were otherwise in good working order and repair). All such replacement property shall be deemed to be incorporated immediately into and to constitute an integral portion of the

Collateral and, as such, shall be subject to the terms of the Construction Addendum, the Borrower Documents, or the Guarantor Documents, as applicable. Neither Lender nor Issuer shall have any responsibility in any of these matters, or for the making of improvements or additions to the Collateral.

**Section 7.07. Insurance.**

(a) Borrower shall, during the term of this Agreement, procure or cause to be procured and keep in force the insurance coverages required by the Construction Addendum, the Borrower Documents, or the Guarantor Documents, as applicable.

(b) **[HNB] [All of the insurance policies required hereunder shall be issued by corporate insurers licensed to do business in the state in which the Property is located and having a Best's Rating-Financial Size Rating of A:VIII or better as determined and published by A.M. Best Company and shall be in form acceptable to Lender.]** Evidence of all insurance required to be maintained hereunder shall be delivered to Lender (which may include the requirement of an Accord 28 "Evidence of Property Insurance" form as to property insurance) prior to or contemporaneously with Borrower's execution of this Agreement. All such evidence shall be in form acceptable to Lender and shall require the insurance company to give to Lender at least 10 days' prior written notice before canceling the policy for any reason or materially amending it. Evidence of all renewal and substitute policies of insurance shall be delivered to Lender at least 10 days before termination of the policies being renewed or substituted. If any loss shall occur at any time during the continuance of a Default or Event of Default, Lender shall be entitled to the benefit of all insurance policies held or maintained by Borrower, to the same extent as if same had been made payable to Lender, and upon foreclosure under the Mortgage or the Security Agreement, Lender shall become the owner thereof. Lender shall have the right, but not the obligation, to make premium payments, at Borrower's expense, to prevent any cancellation, endorsement, alteration or reissuance of any policy of insurance maintained by Borrower.

(c) As among Lender, Borrower and Issuer, Borrower assumes all risks and liabilities from any cause whatsoever, whether or not covered by insurance, for loss or damage to any portion of the Collateral and for injury to or death of any person or damage to any property, whether such injury or death be with respect to agents or employees of Borrower or of third parties, and whether such property damage be to Borrower's property or the property of others. Whether or not covered by insurance, Borrower hereby assumes responsibility for and agrees to reimburse Lender and Issuer for and will indemnify, defend and hold Lender and Issuer harmless from and against all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fees) of whatsoever kind and nature, imposed on, incurred by or asserted against Lender or Issuer that in any way relate to or arise out of this Agreement, the transactions contemplated hereby and the Collateral and the Project, including but not limited to, (i) the selection, manufacture, construction, purchase, acceptance or rejection of the Collateral or the Project or the ownership of the Collateral or the Project, (ii) the delivery, lease, possession, maintenance, use, condition, return or operation of the Collateral or the Project, (iii) the condition of the Collateral or the Project sold or otherwise disposed of after possession by Borrower, (iv) any patent or copyright infringement, (v) the conduct of Borrower, each Guarantor, and their respective officers, employees and agents, (vi) a breach of Borrower or

any Guarantor of any of its covenants or obligations under any Borrower Document or any Guarantor Document and (vii) any claim, loss, cost or expense involving alleged damage to the environment relating to the Collateral, including, but not limited to investigation, removal, cleanup and remedial costs. All amounts payable by Borrower pursuant to the immediately preceding sentence shall be paid immediately upon demand of Issuer or Lender, as the case may be. This provision shall survive the termination of this Agreement.

**Section 7.08. *Preservation of Corporate Existence.*** Borrower will and will cause each Guarantor to preserve and maintain its legal existence and all of its rights, privileges and franchises necessary or desirable in the normal conduct of its business and shall continue to be authorized to conduct business in the State; and shall conduct its business in an orderly, efficient and regular manner.

**Section 7.09. *Performance by Lender.*** In addition to all of Lender's rights and remedies set forth in this Agreement and any other Borrower Document; if Borrower at any time fails to perform or observe any of the covenants or agreements contained in any Borrower Document, and if such failure shall continue for a period of 10 Business Days after Lender gives Borrower written notice thereof (or in the case of the agreements contained in Sections 7.06 and 7.07 hereof, immediately upon the occurrence of such failure, without notice or lapse of time), Lender may, but need not, perform or observe such covenant on behalf and in the name, place and stead of Borrower (or, at Lender's option, in Lender's name) and may, but need not, take any and all other actions which Lender may reasonably deem necessary to cure or correct such failure (including, without limitation, the payment of taxes, the satisfaction of security interests, liens or encumbrances, the performance of obligations owed to account debtors or other obligors, the procurement and maintenance of insurance, the execution of assignments, security agreements and financing statements, and the endorsement of instruments); and Borrower shall thereupon pay to Lender on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by Lender in connection with or as a result of the performance or observance of such agreements or the taking of such action by Lender, together with interest thereon from the date expended or incurred at the Default Rate. To facilitate the performance or observance by Lender of such covenants of Borrower, Borrower hereby irrevocably appoints Lender, or the delegate of Lender, acting alone, as the attorney in fact of Borrower, coupled with an interest, with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file in the name and on behalf of Borrower any and all instruments, documents, assignments, security agreements, financing statements, applications for insurance and other agreements and writings required to be obtained, executed, delivered or endorsed by Borrower under this Agreement.

**Section 7.10. *Financial Covenants.*** Borrower shall maintain compliance with the following financial covenants so long as the Bonds remain outstanding:

(a) **Liquidity.** Borrower shall maintain Unrestricted Cash and Investments on hand of not less than 150 days. Compliance with this covenant shall be tested semi-annually as of each February 28 and August 30, during the term of this Agreement. Provided, however, that the Borrower may choose one consecutive twelve (12) month period during the Construction Period during which Unrestricted Cash and Investments on hand may be no less than 125 days.

(b) Minimum Occupancy. The Occupancy Rate for the entire facility of the Borrower, on a combined basis, shall be no less than 87%. This covenant shall be tested semi-annually on each February 28 and August 30 during the term of this Agreement. Provided, however, that Borrower may choose a consecutive six (6) month period of time during the Construction period whereby the Occupancy Rate may be no less than 85%.

(c) Unrestricted Cash and Investments to Indebtedness Ratio. Borrower shall maintain a ratio of Unrestricted Cash and Investments to Indebtedness of not less than 0.5. This covenant shall be tested semi-annually as of each February 28 and August 30 during the term of this Agreement.

(d) Adjusted Debt Service Coverage Ratio. Borrower shall maintain an Adjusted Debt Service Coverage Ratio of not less than 1.35 through [August 1, 2012], and thereafter, shall maintain an Adjusted Debt Service Coverage Ratio of not less than 1.45. This covenant shall be tested quarterly \_\_\_\_\_. [HNB]

With respect to the financial covenants set forth in Sections 7.10(a) and (c) above, the Borrower and the Lender agree that (1) although the Borrower shall maintain minimum Unrestricted Cash and Investments, as set forth above, the requirements to maintain these amounts and ratios shall not require the amount of any particular fund, account or investment of the Borrower to exceed the reasonable needs for which the Borrower maintains the fund, account or investment, and (b) the Borrower may spend amounts in those funds, accounts and investments without any restrictions under this Agreement as long as the minimum Unrestricted Cash and Investments is replenished to the minimum required amounts and ratios on the next testing date.

**Section 7.11. *Subsidiary Guaranties.*** Take, and cause each Subsidiary to take, such actions as are necessary or as the Lender may reasonably request from time to time (including the execution and delivery of Guarantor Documents, financing statements and other documents, the filing or recording of any of the foregoing, and the delivery of stock certificates and other Collateral with respect to which perfection is obtained by possession) to ensure that the obligations of Borrower under the Borrower Documents are guaranteed by all current and future Subsidiaries pursuant to a Guaranty, which shall be secured by all assets of each Subsidiary.

**Section 7.12. *Banking Relationship.*** Within \_\_\_\_\_ (\_\_) days after the Closing Date, Borrower shall establish all of its primary commercial banking accounts (including, without limitation, the Operating Account) and all of its investment accounts with Lender (such accounts hereinafter collectively referred to as the "Bank Accounts"). In addition, Borrower shall exclusively use the Lender for all (i) safe deposit services, (ii) automated clearinghouse, wire transfer and money order services, (iii) treasury and cash management services, (iv) trustee or executor services, (v) custody services, and (vi) paying agent, transfer agent, and registrar services required by Borrower in connection with the Bank Accounts.

**Section 7.13. *Project Covenants.*** With respect to the Project, Borrower shall or shall cause the Contractors to, as applicable:

(a) Diligently construct and equip the Project to completion in accordance with the plans and specifications therefor that Lender has approved and not abandon construction.

(b) Provide evidence satisfactory to Lender of the availability of such sums as Lender may require if at any time Lender deems that the amount available to construct and equip the Project will not be sufficient to complete the Project in accordance with approved plans and specifications, to pay interest on the Bonds during the Construction Period and other sums due under the Borrower Documents, or to cover cost overruns, within 10 days after notice from Lender.

(c) Obtain Lender's prior written approval, which may be withheld in Lender's sole discretion, of any change in the approved plans and specifications for the Project that might adversely affect the value of the Project or result in cost overruns. Lender shall have a reasonable time period to evaluate requests for approval of any changes. In addition to giving its approval, Lender may require Borrower to deposit additional funds with Lender to cover anticipated increased costs resulting from the change.

(d) If Lender determines in good faith that any work or materials related to the Project do not conform to approved plans and specifications or are not in accordance with the requirements of this Agreement or the Construction Addendum, Borrower shall cause the work to be stopped at Lender's request, and Lender may withhold disbursements until the matter is corrected. Borrower shall promptly cause the work or materials to be corrected to Lender's satisfaction.

(e) At Lender's request, post signs on the Property to identify Lender as the Project lender.

(f) Maintain accounting records for the performance of the Project separate from Borrower's general accounting records, in order to facilitate the determination of costs incurred in connection with the Project and compliance with the Borrower Documents. Upon reasonable advance notice, Lender shall have access to and the right to examine all such records.

(g) Each time Borrower becomes aware of any change that would increase the total cost of the Project by more than \$ \_\_\_\_\_ [NEED HNB INPUT], or more than \$ \_\_\_\_\_ [NEED HNB INPUT] in the aggregate during any one-month period, then Borrower shall immediately notify Lender in writing. Lender may refuse to make any further disbursement of Loan Proceeds unless and until Borrower demonstrates to Lender's satisfaction that Borrower has adequate funds to pay for any increase in the total cost of the Project. Lender may require Borrower to deposit additional funds with Lender to cover such increased costs.

## **ARTICLE VIII.**

### **NEGATIVE COVENANTS OF BORROWER**

So long as the Loan and the Bonds shall remain unpaid, Borrower agrees that:

**Section 8.01. *Sale of Assets.*** The Borrower will not sell, lease, assign, transfer or otherwise dispose of any of the Collateral or the Project or any interest therein (whether in one

transaction or in a series of transactions), other than in the ordinary course of business without the prior written consent of Lender.

**Section 8.02. Consolidation and Merger.** The Borrower will not consolidate with or merge into any person, or permit any other person to merge into it or acquire (in a transaction analogous in purpose or effect to a consolidation or merger) all or substantially all of the assets of any other person.

**Section 8.03. Accounting.** The Borrower will not adopt, permit or consent to any material change in accounting principles other than as required by GAAP. The Borrower will not adopt, permit or consent to any change in its fiscal year without the prior written consent of Lender.

**Section 8.04. Modifications and Substitutions.** Borrower shall not make any material alterations, modifications or additions to, or substitutions of, the Plans, the Budget, the Project Schedule, or the Collateral without the prior written consent of Lender; *provided, however*, that any substitutions of Collateral made pursuant to Borrower's obligations to make repairs and replacements referenced under any provision of this Agreement or to dispose of Collateral that has reached the end of its useful life shall not require such prior written consent. Borrower shall provide such documents or assurances as Lender may reasonably request to maintain or confirm the lien in favor of Lender on the Collateral as so altered, modified or substituted.

**Section 8.05. Use of Property.** Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Agreement was executed. Borrower shall not, without Lender's prior written consent, (a) initiate or acquiesce in a change in the zoning classification (including any variance under any existing zoning ordinance applicable to the Property), (b) permit the use of the Property to become a non-conforming use under applicable zoning ordinances, (c) file any subdivision or parcel map affecting the Property, or (d) amend, modify or consent to any easement or covenants, conditions and restrictions pertaining to the Property.

**Section 8.06. Loans or Advances.** Borrower will not make any loans or advances to any person or entity, including to any of its Affiliates, officers, members of its Board of Directors or other insiders of Borrower; provided that Borrower may make loans, advances, investments or gifts not exceeding \$\_\_\_\_\_ in the aggregate [NEED HNB INPUT].

**Section 8.07. Borrowed Money.** Borrower will not, directly or indirectly, create, incur, or assume Indebtedness, or otherwise become, be, or remain liable with respect to, any Indebtedness without the written consent of the Lender; provided, that the foregoing restrictions shall not apply to:

- (a) The Indebtedness evidenced by this Agreement, the Bonds, and any other Indebtedness now or hereafter payable by Borrower to the Lender or any Affiliate of the Lender;
- (b) Indebtedness secured by Permitted Exceptions;
- (c) [OTHER? – NEED HNB INPUT]

**Section 8.08. *Assumptions; Guaranties.*** Borrower will not assume, guarantee, endorse, or otherwise become directly or contingently liable for (including, without limitation, liable by way of agreement, contingent or otherwise, to purchase, to provide funds for payment, to supply funds to, or otherwise invest in any debtor or otherwise to assure any creditor against loss) any financial obligation or Indebtedness of any other person or entity, except guaranties by endorsement of negotiable instruments for deposit, collection, or similar transactions in the ordinary course of business.



## ARTICLE IX.

### DAMAGE AND DESTRUCTION; CONDEMNATION

**Section 9.01. *Damage and Destruction.*** Borrower shall provide a complete written report to Lender immediately upon any loss, theft, damage or destruction of any Collateral in excess of \$50,000 and of any accident involving any Collateral. With respect to any Damaged Collateral, Borrower shall as soon as practicable after such event either: (a) replace the same at Borrower's sole cost and expense with property having substantially similar specifications and of equal or greater value to the Damaged Collateral immediately prior to the time of the loss occurrence, such replacement property to be subject to Lender's approval, whereupon such replacement property shall automatically become Collateral and shall be substituted in this Agreement and the other related documents by appropriate endorsement or amendment; or (b) pay the applicable Damaged Collateral Amount. Borrower shall notify Lender of which course of action it will take within 15 calendar days after the loss occurrence. If, within 45 calendar days of the loss occurrence, (a) Borrower fails to notify Lender; (b) Borrower and Lender fail to execute an amendment to this Agreement and any related document to delete the Damaged Collateral and add the replacement property to the extent required by this Agreement, or (c) Borrower fails to pay the applicable Damaged Collateral Amount, then Lender may, at its sole discretion, declare the applicable Damaged Collateral Amount to be immediately due and payable, and Borrower shall pay the same. The Net Proceeds of insurance with respect to the Damaged Collateral shall be paid to Lender to be applied to discharge Borrower's obligation under this Section. The payment of the Damaged Collateral Amount and the termination of Lender's interest in the Damaged Collateral is subject to the terms of Section 2.07 hereof. For purposes of this Section, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim after deducting all reasonable expenses (including reasonable attorneys' fees) incurred in the collection of such claim.

**Section 9.02. *Condemnation.*** If the Collateral, or any part thereof, shall be condemned for any reason, including without limitation fire or earthquake damage, or otherwise taken for public or quasi-public use under the power of eminent domain, or be transferred in lieu thereof, all damages or other amounts awarded for the taking of, or injury to, the Collateral shall be paid to Lender who shall have the right, in its sole and absolute discretion, to apply the amounts so received against (a) the costs and expenses of Lender, including attorneys' fees incurred in connection with collection of such amounts, and (b) the balance against the amounts due hereunder; *provided, however*, that if (i) no Event of Default shall have occurred and be continuing hereunder, (ii) Borrower provides evidence satisfactory to Lender of its ability to pay all amounts becoming due hereunder during the pendency of any restoration or repairs to or replacement of the Collateral, and (iii) Lender determines, in its sole discretion, that the proceeds of such award are sufficient to restore, repair, replace and rebuild the Collateral as nearly as possible to its value, condition and character immediately prior to such taking (or, if the proceeds of such award are insufficient for such purpose, if Borrower provides additional sums to Lender's satisfaction so that the aggregate of such sums and the proceeds of such award will be sufficient for such purpose), the proceeds of such award, together with additional sums provided by Borrower, shall be placed in a separate account controlled by Lender and used by Borrower to restore, repair, replace and rebuild the Collateral as nearly as possible to its value, condition and character immediately prior to such taking. All work to be performed in connection therewith

shall be pursuant to a written contract therefor, which contract shall be subject to the prior approval of Lender, and Borrower's draws from such account to pay for such work shall be subject to Lender's reasonable requirements and documentation. To the extent that any funds remain after the Collateral has been so restored and repaired, the same shall be applied against the amounts due hereunder in such order as Lender may elect. To enforce its rights hereunder, Lender shall be entitled to participate in and control any condemnation proceedings and to be represented therein by counsel of their own choice and Borrower will deliver, or cause to be delivered to Lender such instruments as may be requested by them from time to time to permit such participation. In the event Lender, as a result of any such judgment, decree or award, believes that the payment or performance of the Loan or the Bonds is impaired, Lender may declare all of the amounts due hereunder immediately due and payable.

## ARTICLE X.

### ASSIGNMENT, SUBLEASING AND SELLING

**Section 10.01. *Assignment by Lender.*** (1) This Agreement, and the obligations of Borrower to make payments hereunder, may be assigned and reassigned in whole or in part to one or more assignees or subassignees (who shall be purchasers of the Bonds or an interest therein) by Lender at any time subsequent to its execution, without the necessity of obtaining the consent of Issuer or Borrower; *provided, however*, that no such assignment or reassignment shall be effective unless and until (a) Issuer and Borrower shall have received notice of the assignment or reassignment disclosing the name and address of the assignee or subassignee, which notice Issuer shall maintain as evidence of the ownership and registration of the Bonds, and (b) in the event that such assignment or reassignment is made to a bank or trust company as trustee for holders of certificates representing interests in this Agreement and the Bonds, such bank or trust company agrees to maintain, or cause to be maintained, a book-entry system by which a record of the names and addresses of such holders as of any particular time is kept and agrees, upon request of Issuer or Borrower, to furnish such information to Issuer or Borrower. Upon receipt of notice of assignment, Borrower will reflect in a book-entry the assignee designated in such notice of assignment, and shall agree to make all payments to the assignee designated in the notice of assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Issuer and Borrower may from time to time have against Lender or the assignee. Issuer and Borrower agree to execute all documents, including replacement bonds, notices of assignment and chattel mortgages, which may be reasonably requested by Lender or its assignee to protect their interest in the Collateral and in this Agreement.

(2) Anything in this Agreement to the contrary notwithstanding, and without the need to comply with any of the formal or procedural requirements of this Agreement, including this Section, the Lender may at any time and from time to time pledge and assign all or any portion of its rights under all or any of the Borrower Documents or the Guarantor Documents to a Federal Reserve Bank; provided that no such pledge or assignment shall release the Lender from its obligations hereunder.

(3) The Lender shall have the right to sell participations to one or more entities in or to all or a portion of its rights and obligations under the Borrower Documents or the Guarantor Documents; provided, however, that (i) the Lender's obligations under this Agreement shall remain unchanged, and (ii) Borrower shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement and with regard to any and all payments to be made under this Agreement or the Bonds.

(4) Borrower acknowledges and agrees that Lender may provide to any assignee or participant originals or copies of the Borrower Documents, the Guarantor Documents, and any other documents, instruments, certificates, opinions, insurance policies, letters of credit, reports, requisitions and other materials and information of every nature or description, and may communicate all oral information, at any time submitted by or on behalf of Borrower or received by Lender in connection with the Bonds or this Agreement or with respect to Borrower, provided that prior to any such delivery or communication, such assignees or participants shall agree to

preserve the confidentiality of any of the foregoing to the same extent that the Lender has agreed to preserve such confidentiality. In order to facilitate assignments to assignees and sales to participants, Borrower shall execute such further documents, instruments or agreements as Lender may reasonably require. In addition, Borrower agrees to cooperate fully with the Lender in the exercise of Lender's rights pursuant to this Section, including providing such information and documentation regarding Borrower as the Lender or any potential assignee or participant may reasonably request.

**Section 10.02. *No Sale or Assignment by Borrower.*** This Agreement and the interest of Borrower in the Collateral may not be sold, assumed, assigned or encumbered by Borrower other than by the lien created hereunder, under the Mortgage, or under the Security Agreement and the Permitted Exceptions. Nothing in this Section 10.02, however, shall prevent the Borrower from leasing all or a portion of the Project to a lessee, who Borrower shall cause to comply with all provisions of the Agreement and the Tax Representation Certificate.

## ARTICLE XI.

### EVENTS OF DEFAULT AND REMEDIES

**Section 11.01. *Events of Default.*** The following constitute "Events of Default" under this Agreement:

(a) failure by Borrower to pay to Lender, as assignee of Issuer when due any Loan Payment or to pay any other payment required to be paid hereunder and the continuation of such failure for a period of 10 days;

(b) failure by Borrower to maintain insurance on the Collateral in accordance with Section 7.07 hereof;

(c) failure by Borrower to comply with the provisions of Sections 6.04, 7.02, 7.06, 7.08, 7.10, all sections of Article 8 hereof, Section 10.01, or Section 10.02;

(d) failure by Borrower or Issuer to observe and perform any other covenant, condition or agreement contained in this Agreement on its part to be observed or performed for a period of 30 days after written notice is given to such party, as the case may be, specifying such failure and directing that it be remedied; *provided, however*, that, if the failure stated in such notice cannot be corrected within such 30-day period, Lender will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Borrower or Issuer or any lessee, as the case may be, within the applicable period and diligently pursued until the default is corrected;

(e) Borrower shall be or become insolvent, or admit in writing its inability to pay its debts as they mature, or make an assignment for the benefit of creditors; or Borrower shall apply for or consent to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of Borrower, as the case may be; or Borrower shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against Borrower; or any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied against a substantial part of the property of Borrower;

(f) any representation or warranty made by Borrower or Issuer in any Borrower Document, any representation or warranty made by any Guarantor in any Guarantor Document, of any representation or warranty made by Borrower in any other document executed in connection herewith was untrue in any material respect when made;

(g) the failure of the Bonds, this Agreement and the Arbitrage Certificate to be legal, valid and binding obligations of Issuer, enforceable in accordance with their respective terms, except to the extent limited by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights or a Determination of Taxability shall have occurred;

(h) an amendment or termination relating to a filed financing statement describing any of the Collateral is improperly filed, or authorized to be filed, by Borrower;

(i) the occurrence of a default or an event of default (however defined) under any instrument, agreement or other document evidencing, relating to or securing any indebtedness or other monetary obligation of Borrower, including, without limitation, under any Guarantor Document or any of the Construction Assignments;

(j) **[Borrower has requested removal or modification to allow changes in membership consistent with the Bylaws]** ownership of the stock or membership interests in Borrower changes during the period that the Loan is outstanding (Borrower hereby acknowledges that Lender has made its decision to enter into the transactions contemplated hereby based upon the management expertise of the current stockholders, members and managers and their ownership of the stock and membership interests in Borrower); or

(k) the occurrence of an event of default (however defined) under any Borrower Document or any other agreement between or among Lender or any of its affiliates and Borrower, including, without limitation, under any Guarantor Document or any of the Construction Assignments.

**Section 11.02. Remedies on Default.** Whenever an Event of Default described in Section 11.01(e) or (g) hereof shall have occurred, the Bonds automatically shall be due and payable, whereupon the Principal amount and Interest at the Default Rate automatically shall become and be forthwith due and payable without presentment, notice of dishonor, protest or further notice of any kind, all of which are hereby expressly waived by Borrower. Whenever any other Event of Default shall have occurred, Lender shall have the right, at its sole option without any further demand or notice, to take any one or any combination of the following remedial steps which are accorded to Lender, as assignee of Issuer, by applicable law without presentment, notice of dishonor, protest or further notice of any kind, all of which are hereby expressly waived by Borrower:

(a) by notice to Issuer and Borrower, declare the Principal amount, and Interest at the Default Rate, to be forthwith due and payable, whereupon the Principal and Interest amount shall become and be forthwith due and payable by Borrower, without presentment, notice of dishonor, protest or further notice of any kind, all of which are hereby expressly waived by Borrower;

(b) take possession of the Collateral wherever situated, without any court order or other process of law and without liability for entering the Property or other premises, and lease, sublease or make other disposition of the Collateral for use over a term in a commercially reasonable manner, all for the account of Lender, provided that Borrower shall remain directly liable for the deficiency, if any, between the rent or other amounts paid by a lessee or sublessee of the Collateral pursuant to such lease or sublease during the same period of time, after deducting all costs and expenses, including reasonable attorneys' fees and expenses, incurred with respect to the recovery, repair and storage of the Collateral during such period of time;

(c) take possession of the Collateral wherever situated, without any court order or other process of law and without liability for entering the Property or other premises, and sell the

Collateral in a commercially reasonable manner. All proceeds from such sale shall be applied in the following manner:

FIRST, to pay all proper and reasonable costs and expenses associated with the recovery, repair, storage and sale of the Collateral, including reasonable attorneys' fees and expenses;

SECOND, to pay (i) Lender the amount of all unpaid Loan Payments or other obligations (whether direct or indirect owed by Borrower to Lender), if any, which are then due and owing, together with Interest, at the Default Rate, and late charges thereon, (ii) Lender the then Principal amount (taking into account the payment of past-due Loan Payments as aforesaid), plus a pro rata allocation of Interest, at the rate utilized to calculate the Loan Payments, from the next preceding due date of a Loan Payment until the date of payment by the buyer, and (iii) any other amounts due hereunder, including indemnity payments, taxes, charges, reimbursement of any advances and other amounts payable to Lender or Issuer hereunder; and

THIRD, to pay the remainder of the sale proceeds, purchase moneys or other amounts paid by a buyer of the Collateral to Borrower;

(d) proceed by appropriate court action to enforce specific performance by Issuer or Borrower of the applicable covenants of this Agreement or to recover for the breach thereof, including the payment of all amounts due from Borrower. Borrower shall pay or repay to Lender or Issuer all costs of such action or court action, including, without limitation, reasonable attorneys' fees;

(e) exercise all rights and remedies under any Borrower Document or any Guarantor Document; and

(f) take whatever action at law or in equity that may appear necessary or desirable to enforce its rights with respect to the Collateral, any Borrower Document, or any Guarantor Document. Borrower shall pay or repay to Lender or Issuer all costs of such action or court action, including, without limitation, reasonable attorneys' fees.

Notwithstanding any other remedy exercised hereunder, Borrower shall remain obligated to pay to Lender any unpaid portion of the Prepayment Amount.

**Section 11.03. *No Remedy Exclusive.*** No remedy herein conferred upon or reserved to Lender or Issuer is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lender or Issuer to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required by this Article. All remedies herein conferred upon or reserved to Lender or Issuer shall survive the termination of this Agreement.

**Section 11.04. *Late Charge.*** [HNB INPUT] Any Loan Payment not paid by Borrower within \_\_\_\_\_ (\_\_) days of the due date thereof shall, to the extent permissible by law, bear a late charge equal to \_\_\_\_\_ per dollar of the delinquent amount or the lawful maximum, and Borrower shall be obligated to pay the same immediately upon receipt of Lender's written invoice therefor.



## ARTICLE XII.

### MISCELLANEOUS

**Section 12.01. *Costs and Expenses of Lender.*** Borrower shall pay to Lender and Issuer, in addition to the Loan Payments payable by Borrower hereunder, such amounts as shall be required by Lender or Issuer in payment of any reasonable costs and expenses incurred by Lender or Issuer in connection with the execution, performance or enforcement of this Agreement, including but not limited to payment of Lender's one-time construction monitoring fee of \$20,000 on the Closing Date, all reasonable fees, costs and expenses and all administrative costs of Lender or Issuer in connection with the Collateral, expenses (including, without limitation, attorneys' fees and disbursements), fees of the Construction Monitor and of auditors or attorneys, insurance premiums not otherwise paid hereunder and all other direct and necessary administrative costs of Lender or Issuer or charges required to be paid by it in order to comply with the terms of, or to enforce its rights under, this Agreement. Such costs and expenses shall be billed to Borrower by Lender or Issuer, as the case may be, from time to time, together with a statement certifying that the amount so billed has been paid by Lender or Issuer for one or more of the items above described, or that such amount is then payable by Lender or Issuer for such items. Amounts so billed shall be due and payable by Borrower within 30 days after receipt of the bill by Borrower.

**Section 12.02. *Disclaimer of Warranties.*** LENDER AND ISSUER MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE COLLATERAL, THE PROJECT, THE PLANS, THE CONTRACTS, OR ANY OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT THERETO. In no event shall Lender or Issuer be liable for any loss or damage in connection with or arising out of this Agreement, the Collateral the Project, the Plans, the Contracts or the existence, furnishing, functioning or Borrower's use of any item or products or services provided for in this Agreement.

**Section 12.03. *Notices.*** All notices, certificates, requests, demands and other communications provided for hereunder or under any Borrower Document shall be in writing and shall be (a) personally delivered, (b) sent by first class United States mail, (c) sent by overnight courier of national reputation, or (d) transmitted by telecopy, in each case addressed to the party to whom notice is being given at its address as set forth above and, if telecopied, transmitted to that party at its telecopier number set forth above or, as to each party, at such other address or telecopier number as may hereafter be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section. All such notices, requests, demands and other communications shall be deemed to have been given on (a) the date received if personally delivered, (b) when deposited in the mail if delivered by mail, (c) the date sent if sent by overnight courier, or (d) the date of transmission if delivered by telecopy. If notice to Borrower of any intended disposition of the Collateral or any other intended action is required by law in a particular instance, such notice shall be deemed commercially reasonable if given (in the manner specified in this Section) at least 10 calendar days prior to the date of intended disposition or other action.

**Section 12.04. *Further Assurance and Corrective Instruments.*** Issuer and Borrower hereby agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further acts, instruments, conveyances, transfers and assurances, as Lender reasonably deems necessary or advisable for the implementation, correction, confirmation or perfection of any Borrower Document, any Guarantor Document, any Liens of Lender, and any rights of Lender hereunder or thereunder.

**Section 12.05. *Binding Effect; Time of the Essence.*** This Agreement shall inure to the benefit of and shall be binding upon Lender, Issuer, Borrower and, except as otherwise set forth in Section 10.02, their respective successors and assigns. There are no third party beneficiaries of this Agreement, including, without limitation, the Contractors. Time is of the essence.

**Section 12.06. *Severability.*** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 12.07. *Amendments.*** To the extent permitted by law, the terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the parties hereto, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. The Issuer's consent shall not be required for any amendment of this Agreement after the Closing Date, except to the extent such amendment affects Issuer's rights under Sections 7.07, 12.03, 12.14, or 12.15.

**Section 12.08. *Execution in Counterparts.*** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart, provided that only the original marked "Original: 1 of 4" on the execution page thereof shall constitute chattel paper under the UCC. A purchase of this chattel paper from Issuer would violate the rights of Lender.

**Section 12.09. *Applicable Law.*** This Agreement shall be governed by and construed in accordance with the laws of the State.

**Section 12.10. *Captions.*** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

**Section 12.11. *Entire Agreement.*** The Borrower Documents and all exhibits thereto constitute the entire agreement among Lender, Issuer, and Borrower with respect to their subject matter. There are no understandings, agreements, representations or warranties, express or implied, not specified herein or in such documents or the Guarantor Documents regarding this Agreement or the Project financed hereby.

**Section 12.12. *Usury.*** It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary in this Agreement, in no event shall this Agreement require the payment or permit the

collection of interest or any amount in the nature of interest or fees in excess of the maximum permitted by applicable law.

**Section 12.13. *Accreditation of Lender.*** Lender represents to Issuer and Borrower that it is an "accredited investor" that is a "bank" within the meaning of Section 2(15)(i) of the Securities Act of 1933, as amended (the "1933 Act") or a "qualified institutional buyer" within the meaning of Rule 144A(a)(1) promulgated by the Securities Exchange Commission pursuant to the 1933 Act. Lender will deliver an investment letter on or before the date of the Initial Advance in the form of Exhibit G hereto.

Lender hereby represents to Issuer in connection with any resale of the Bonds, that it will obtain written certification, certified to the holder and the Issuer, to the effect that the purchase of the Bonds in a secondary market transaction from the holder is an "accredited investor" that is a "bank" within the meaning of Section 2(15) of the Securities Act of 1933, as amended (the "1933 Act"), or a "qualified institutional buyer" within the meaning of Rule 144A(a)(1) promulgated by the Securities Exchange Commission pursuant to the 1933 Act or in the event that the principal, interest, and purchase price, if applicable, of the Bonds (or trust certificates evidencing an ownership interest in the Bonds) are then secured by a letter of credit, any "accredited investor" within the meanings of Section 2(15) of the 1933 Act.

**Section 12.14. *Limitations of Liability.*** In no event, whether as a result of breach of contract, warranty, tort (including negligence or strict liability), indemnity or otherwise, shall Lender, its assignees, if any, or Issuer be liable for any special, consequential, incidental, punitive or penal damages, including, but not limited to, loss of profit or revenue, loss of use of the Collateral, service materials or software, damage to associated equipment, service materials or software, cost of capital, cost of substitute property, service materials or software, facilities, services or replacement power or downtime costs.

**Section 12.15. *Indemnification.*** Borrower shall indemnify and hold harmless Issuer and Lender and each of their officers, directors, officials, employees, agents, attorneys, accountants, advisors, consultants, members and servants, past, present or future, from and against (a) any and all claims by or on behalf of any person or entity arising from any cause whatsoever in connection with the Loan, any of the Borrower Documents, any of the Guarantor Documents, the Project or the issuance, offering, sale or remarketing of the Bonds; (b) any and all claims arising from any act or omission of Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Loan, any of the Borrower Documents, any of the Guarantor Documents, the Project or the issuance, offering, sale or remarketing of the Bonds; and (c) all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that Borrower shall not be required to indemnify any person for damages caused by the gross negligence or willful misconduct or unlawful acts of such person or in connection with any dispute between or among the City of West Lafayette Economic Development Commission, Issuer and/or any officer thereof. In the event that any action or proceeding is brought or claim made against Issuer, Lender or any of their officers, directors, officials, employees, agents, attorneys, accountants, advisors, consultants, members or servants, with respect to which indemnity may be sought hereunder, Borrower, upon written notice thereof from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The

indemnified party shall have the right to approve a settlement to which it is a party. The provisions of this Section shall survive the termination of this Agreement.

**Section 12.16. *Waiver of Jury Trial.*** LENDER, ISSUER AND BORROWER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, ANY OF THE RELATED DOCUMENTS, ANY DEALINGS AMONG LENDER, ISSUER OR BORROWER RELATING TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG LENDER, ISSUER AND BORROWER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT (INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY RELATED DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY RELATED TRANSACTIONS. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**Section 12.17. *OFAC Provisions.***

(a) Representations. No portion of the Project has been purchased by Borrower or improved, equipped or furnished by Borrower with proceeds of any illegal activity, nor will Borrower accept any proceeds of any illegal activity as consideration for a sale of the Project. Borrower, and to the best of Borrower's knowledge, after having made diligent inquiry, represents and warrants that (a) each Person owning an interest in Borrower, (b) each property manager, (c) each Guarantor and (d) each licensee or other user of the Project: (i) is not currently identified on the OFAC List, and (ii) is not a Person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States. Borrower has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times.

(b) Covenants. Borrower shall comply with all Requirements of Law relating to money laundering, anti-terrorism, trade embargoes and economic sanctions, now or hereafter in effect. Upon Lender's request from time to time, Borrower shall certify in writing to Lender that Borrower's representations, warranties and obligations under this Section 12.17 remain true and correct and have not been breached. Borrower shall immediately notify Lender in writing if any of such representations, warranties or covenants are no longer true or have been breached or Borrower has a reasonable basis to believe that they may no longer be true or have been breached. In connection with such an event, Borrower shall comply with all Requirements of Law and directives of Governmental Authorities and, at Lender's request, provide to Lender copies of all notices, reports and other communications exchanged with, or received from,

Governmental Authorities relating to such an event. Borrower shall also reimburse Lender any expense incurred by Lender in evaluating the effect of such an event on Borrower's obligations under this Agreement, the other Borrower Documents and Lender's interest in the Project and/or other Collateral, in obtaining any necessary license from Governmental Authorities as may be necessary for Lender to enforce its rights under this Agreement and the other Borrower Documents and in complying with all Requirements of Law applicable to Lender as the result of the existence of such an event and for any penalties or fines imposed upon Lender as a result thereof.

(c) Definitions. For purposes of this Section 12.17 only, the following terms shall be defined as set forth below:

(i) "Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to such government.

(ii) "OFAC List" means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the U.S. Treasury Department, Office of Foreign Assets Control pursuant to any Requirements of Law, including, without limitation, trade embargo, economic sanctions, or other prohibitions imposed by Executive Order of the President of the United States. The OFAC List currently is accessible through the internet website [www.treas.gov/ofac/t11sdn.pdf](http://www.treas.gov/ofac/t11sdn.pdf).

(iii) "Person" means an individual, partnership, limited partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

(iv) "Requirements of Law" means (a) the organizational documents of an entity, and (b) any law, regulation, ordinance, code, decree, treaty, ruling or determination of an arbitrator, court or other Governmental Authority, or any Executive Order issued by the President of the United States, in each case applicable to or binding upon such Person or to which such Person, any of its property or the conduct of its business is subject including, without limitation, laws, ordinances and regulations pertaining to the zoning, occupancy and subdivision of real property.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
EXECUTION PAGE FOLLOWS.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in their respective corporate names by their duly authorized officers, all as of the date first written above.

Lender:

THE HUNTINGTON NATIONAL BANK, a  
national banking association, as Lender

By: \_\_\_\_\_  
Thomas L. Gibbons, Vice President

Issuer:

CITY OF WEST LAFAYETTE, INDIANA

By: \_\_\_\_\_  
Title: Mayor

ATTEST:

\_\_\_\_\_  
Clerk-Treasurer

Borrower:

WESTMINSTER VILLAGE WEST LAFAYETTE,  
INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

EXECUTION PAGE OF BOND PURCHASE AND LOAN AGREEMENT

Exhibit A to Bond Purchase and Loan Agreement

SCHEDULE OF PRINCIPAL PAYMENTS – Series A

<u>Pmt No</u>	<u>Begin</u>	<u>End</u>	<u>Tax-exempt Note</u>		<u>Pmt Due Date</u>
			<u>Notional</u>	<u>Prin Pmt</u>	

**SCHEDULE OF PRINCIPAL PAYMENTS – Series B**  
(to come)



## **Exhibit B to Bond Purchase and Loan Agreement**

## **Exhibit C to Bond Purchase and Loan Agreement**

## **Exhibit D to Bond Purchase and Loan Agreement**

## **Exhibit E to Bond Purchase and Loan Agreement**

## Exhibit F to Bond Purchase and Loan Agreement

### FORM OF DRAW REQUEST

The Huntington National Bank

\_\_\_\_\_  
PROJECT NAME: Westminster Village Project (the "Project")  
BORROWER: Westminster Village West Lafayette, Inc. (the "Borrower")  
DRAW NO: \_\_\_\_\_

Reference is hereby made to that certain Bond Purchase and Loan Agreement dated as of \_\_\_\_\_, 2010 (the "Loan Agreement"), executed by and between the Borrower, the City Of West Lafayette, Indiana (the "Issuer") and The Huntington National Bank (the "Bank"). Capitalized words and phrases used herein without definition shall have the respective meanings ascribed to such words and phrases in the Loan Agreement.

1. Pursuant to the Loan Agreement, the Borrower hereby requests a disbursement in the amount of \$\_\_\_\_\_ from the City of West Lafayette, Indiana Economic Development Revenue Bond, Series 2010B (Westminster Village Project). The Borrower acknowledges that the approval of this disbursement by the Bank is subject to all of the terms and conditions precedent for the disbursement of Loan proceeds, including, without limitation, inspection of the Project, verification of the matters set forth in this Draw Request and the Construction Addendum, and the availability of Loan proceeds. The Borrower acknowledges that no funds shall be disbursed by the Bank in connection with any portion of the Project for which a payoff amount has been quoted by the Bank to a title company.

2. The Borrower agrees to provide, if requested by the Bank, a Vendor Payee List (Sworn Owner's Statement), showing the name and the amount currently due each party to whom the Borrower is obligated for labor, material and/or services supplied. This information would be provided in support of the disbursements requested in this Draw Request.

3. The Borrower hereby represents, warrants and covenants with the Bank as follows:

(a) all conditions precedent to the disbursement have been satisfied, including, without limitation, performance of all of the then pending obligations of Borrower under the Loan Agreement and the other related loan documents;

(b) all representations and warranties made by the Borrower to the Bank in the Loan Agreement and otherwise in connection with the Loan continue to be accurate in all material respects;

(c) no Event of Default has occurred under the Loan Agreement or under any related loan document, and no event, circumstance or condition has occurred or exists which, with the passage of time or the giving of notice, would constitute a Event of Default under the Loan Agreement or under the other related loan documents;

(d) the Borrower has received no notice and has no knowledge of any litigation, proceedings (including proceedings under Title 11 of the United States Code), liens or claims of lien, either filed or threatened against the Borrower, the Project or any Contractor, or the Property, except the liens of the Lender and those which have been specifically identified in writing to the Bank;

(e) no event, circumstance or condition exists or has occurred which could delay or prevent the completion of the Project in a timely manner except as permitted by the loan documents;

(f) all disbursements advanced by the Bank to the Borrower for labor, materials and/or services furnished prior to this draw request have been paid to the parties entitled to such payment, and all Loan proceeds so disbursed have been used for the purposes set forth in the Loan Agreement;

(g) The Borrower hereby agrees and acknowledges that this Draw Request is made for the purpose of inducing the Bank to make a disbursement to the Borrower and the Bank is relying upon the accuracy of such matters in making such disbursement, and the Borrower certifies that the statements made herein and in any documents submitted herewith are true and correct; and

(h) The Borrower requests that this draw be funded and that the funds be disbursed into the Construction Escrow No. \_\_\_\_\_ at \_\_\_\_\_ or deposited to the following account number \_\_\_\_\_ at \_\_\_\_\_.

IN WITNESS WHEREOF, the Borrower has executed this Draw Request as of \_\_\_\_\_, 20\_\_\_\_.

WESTMINSTER VILLAGE WEST  
LAFAYETTE, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## **Exhibit G to Bond Purchase and Loan Agreement**

## **Exhibit H to Bond Purchase and Loan Agreement**